

# JPRC



## TWELFTH ANNUAL REPORT

2018

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**JUSTICES OF THE PEACE  
REVIEW COUNCIL**

ONTARIO

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ISSN 1918-3755



*The Honourable Lise Maisonneuve*

**CHIEF JUSTICE**

**ONTARIO COURT OF JUSTICE**

Chair, Justices of the Peace Review Council



JUSTICES OF THE PEACE REVIEW COUNCIL

Thursday, June 20, 2019

The Honourable Caroline Mulroney  
Attorney General for the Province of Ontario  
720 Bay Street, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2K1

Dear Minister:

It is my pleasure to submit the Twelfth Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2018, in accordance with subsection 9(7) of the *Justices of the Peace Act*.

The period of time covered by this Annual Report is from January 1, 2018 to December 31, 2018.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lise Maisonneuve".

Lise Maisonneuve  
Chief Justice  
Ontario Court of Justice





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## INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2018 to December 31, 2018. This report is the Twelfth Annual Report on the work of the Justices of the Peace Review Council.


The Council is an independent body established by the Province of Ontario under the *Justices of the Peace Act* with a mandate to receive and investigate complaints about the conduct of justices of the peace and to fulfill other functions as described in this report. The Review Council does not have the power to interfere with cases before the courts or to change a decision made by a justice of the peace. Those are matters to be pursued through other legal remedies before the courts.

The Act provides for the Council to submit an Annual Report to the Attorney General on its affairs, including case summaries about complaints. Unless a public hearing has occurred, the report may not include information that identifies a justice of the peace, a complainant or a witness.

This Twelfth Annual Report of the Review Council provides information on the Council's membership, its functions and procedures, and its work during 2018. The Annual Report also includes information on the procedures used to address complaints. Information is also included on applications by justices of the peace for approval to engage in extra-remunerative activities, although names of applicants are confidential.

Justices of the peace play an important role in the administration of justice in Ontario. They are appointed by the Province of Ontario and have their duties assigned by a Regional Senior Justice or a Regional Senior Justice of the Peace. They routinely conduct trials under the *Provincial Offences Act* and preside over bail hearings. They also perform a number of other judicial functions, such as issuing search warrants. Justices of the peace do difficult, important work in the justice system. A justice of the peace may be the only judicial officer that a citizen will encounter in his or her lifetime.

The Review Council had jurisdiction over approximately 406 provincially-appointed justices of the peace, full-time, part-time and *per diem*, during the period of time covered by this Annual Report. In 2018, Ontario Justices of the peace presided over millions of provincial offences matters, such as traffic offences, as well as bail hearings, Intake Court and assignment courts.



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During 2018, the Council received 43 new complaints about justices of the peace, and carried over 35 from previous years. Information about the 45 complaint files completed and closed in 2018 is included in this Report. Decisions made in public hearings during the year are posted on the Council’s website on the webpage Public Hearings Decisions 2018.

We invite you to find out more about the Review Council by reading this Annual Report, and by visiting its website at [www.ontariocourts.ca/ocj/jprc/](http://www.ontariocourts.ca/ocj/jprc/). On the website, you will find the Council’s current policies and procedures; updates about any public hearings that are in progress or that have been completed after this Report was prepared; the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*; the Education Plan; and links to the governing legislation.

## **1. COMPOSITION AND TERMS OF APPOINTMENT**

The Justices of the Peace Review Council is an independent body established under the *Justices of the Peace Act*, R. S. O. 1990, c. J.4. The Review Council has a number of functions which are described in this section, including the review and investigation of complaints about the conduct of justices of the peace.

The Review Council includes the following members:

- ◆ the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- ◆ the Associate Chief Justice Co-ordinator of Justices of the Peace;
- ◆ three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Ontario; and,





- ◆ four community representatives appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

In the appointment of community members, the importance of reflecting, in the composition of the Review Council as a whole, Ontario’s linguistic duality, the diversity of its population and ensuring overall gender balance must be recognized.

The lawyer and community members who are appointed to the Council hold office for four-year terms and are eligible for reappointment. Judicial members on the Council are appointed by the Chief Justice of the Ontario Court of Justice.

## **2. MEMBERS**

The membership of the Review Council in the year covered by this report (January 1, 2018 to December 31, 2018) was as follows:

### ***Judicial Members:***

#### **CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE**

The Honourable Lise Maisonneuve ..... (Toronto)

#### **ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE**

The Honourable Faith Finnestad ..... (Toronto)

#### **THREE JUSTICES OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:**

Her Worship Kristine Diaz ..... (London)  
(Effective January 20, 2018 for four years)

His Worship Bruce Leaman ..... (Thunder Bay)

Her Worship Liisa Ritchie ..... (Peel)



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**TWO JUDGES OF THE ONTARIO COURT OF JUSTICE APPOINTED  
BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:**

The Honourable Justice Lisa Cameron..... (Lindsay)

The Honourable Justice Diane M. Lahaie ..... (Cornwall)

**REGIONAL SENIOR JUSTICE OF THE PEACE APPOINTED  
BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:**

Regional Senior Justice of the Peace Warren Ralph..... (Toronto)

***Lawyer Member:***

Ms. S. Margot Blight ..... (Toronto)

*Borden Ladner Gervais LLP*

***Community Members:***

Dr. Emir Crowne..... (London)

*Counsel, KPA Lawyers PC*

(Until January 22, 2018)

Ms. Jenny Gumbs ..... (Toronto)

*Former Honorary Consul General to Canada for Grenada*

Dr. Michael S. Phillips ..... (Gormley)

*Consultant, Mental Health and Justice*

Ms. Leonore Foster ..... (Kingston)

*Former Councillor of the City of Kingston*



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**Members – Temporary:**


Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel when it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following members were temporary members:

- The Honourable Justice Feroza Bhabha ..... (Toronto)
- The Honourable Justice Joseph A. DeFilippis..... (St. Catharines)
- The Honourable Justice Peter K. Doody ..... (Ottawa)
- The Honourable Justice Neil Kozloff..... (Toronto)
- Regional Senior Justice Esther Rosenberg ..... (Peterborough)
- The Honourable Justice Peter Tetley..... (Newmarket)
- Regional Senior Justice of the Peace Thomas Stinson ..... (Kitchener)

**3. ADMINISTRATIVE INFORMATION**

Office space is shared by both the Ontario Judicial Council and the Justices of the Peace Review Council. The Councils make use of financial, human resources, and technology support staff in the Office of the Chief Justice, as needed, and computer systems without the need of acquiring a large staff.

Councils’ offices are used for meetings of both Councils and their members, and as needed for meetings with judicial officers that may result as part of the disposition of complaints. The Councils have a shared telephone reception and fax number. They share a toll-free number for the use of members of the public across the province of Ontario.



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During the period covered by this report, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a Registrar, a Counsel/Deputy Registrar, two Assistant Registrars and an Administrative Assistant:

Ms. Marilyn E. King, LL.B. – Registrar

Ms. Shoshana Bentley-Jacobs, LL. B. – Counsel and Deputy Registrar  
(Effective June 11, 2018)

Ms. Michelle M. Boudreau – Assistant Registrar

Ms. Ana M. Brigido – Assistant Registrar


Ms. Rachel Doiron – Administrative Assistant  
(Until September 28, 2018 )

Ms. Darlene Ferreira – Administrative Assistant  
(Effective September 25, 2018)

#### **4. FUNCTIONS OF THE REVIEW COUNCIL**

The *Justices of the Peace Act* provides that the functions of the Review Council are:

- ◆ to establish complaints committees from amongst its members to receive and investigate complaints about justices of the peace, and decide upon dispositions under section 11(15);
- ◆ to hold hearings under section 11.1 when hearings are ordered by complaints committees pursuant to section 11(15);
- ◆ to review and approve standards of conduct;
- ◆ to consider applications under section 5.2 for the accommodation of needs;
- ◆ to address continuing education plans; and,
- ◆ to decide whether a justice of the peace who applies for approval to engage in other remunerative work may do so.



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The Review Council does not have the power to interfere with a court case or to change a decision made by a justice of the peace. If a person believes that a justice of the peace made an error in assessing evidence or in making a decision on any of legal issues, the proper way to proceed is through other legal remedies before the courts, such as an appeal.

### ***Rules of Procedure for the Complaints Process***

Under section 10(1) of the *Justices of the Peace Act*, the Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council must make the rules available to the public. The Review Council has established procedures containing rules for the complaints process which are posted on its website under the link for “Policies and Procedures” at [www.ontariocourts.ca/ocj/jprc/policies-and-procedures/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/).

During 2018, the Council continued to refine and develop its procedures and policies.

The Council approved of a change in practice to enable staff to begin to archive files off-site in a secure, confidential manner consistent with that of the Office of the Chief Justice and the Ministry of the Attorney General. The Council also amended its Procedures to clarify the role of Presenting Counsel who is retained for hearings, and to provide clearer information to the public and the judiciary in relation to the hearing process:

- ◆ The amendments incorporated the Council’s existing policy that a lawyer or law firm retained to act as Investigating Counsel to assist a subcommittee investigating a complaint against a particular justice of the peace may not be retained as Presenting Counsel for any hearing ordered for that same complaint or any other complaint against that same justice of the peace.
- ◆ The amendments made it clear that during the hearing process, Presenting Counsel is not instructed by the Hearing Panel or the Registrar and operates independently. Once the hearing process is complete, Counsel takes instructions from the Registrar in any court proceedings, such as an application for judicial review, arising from the hearing. New wording was added to the provision setting out Presenting Counsel’s role to reflect the objective of the judicial disciplinary process to preserve or restore public confidence in the judiciary.



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The Council revised the wording to better explain to the public that during the hearing process, all communications between Presenting Counsel and the Hearing Panel must be made on the record, and in the case of written communications, any communications must be copied to the counsel for the Respondent or where there is no counsel, the Respondent.

The Council added a new provision that reflects the practice of the Council to have the complaints committee review the Notice of Hearing prepared by Presenting Counsel so that the committee can ensure that it accurately reflects the committee's view of the allegations that have been ordered to a hearing.


The Council noted that the wording in the Procedures did not explicitly set out the role of a Hearing Panel and added an additional sentence to help to better explain the process to members of the public and the media. The new provision explains that the Hearing Panel's mandate is to inquire into the facts to decide whether there has been judicial misconduct, and if so, determine the appropriate disposition(s) to preserve or restore public confidence in the judiciary.

In circumstances where a hearing has been ordered, the Procedures provide for the possibility of counsel asking for a pre-hearing conference. The Council noted that the previous wording in the Procedures did not make it clear that members of the investigating complaints committee cannot preside at the pre-hearing conference. Nor did the wording indicate whether discussions at the pre-hearing conference are confidential. Amendments were made to add wording to require that discussions at the pre-hearing conference remain confidential and to reflect that the pre-hearing judge cannot be a member of the complaints committee that investigated the complaint or the hearing panel hearing the evidence in relation to the complaint.

The Council considered the importance of the role of community members in the complaints process, including determining the appropriate disposition that should be imposed following a hearing. The Council noted that it is important that members of the public understand that the pre-hearing conference judge does not have a role in deciding upon the appropriate disposition. The legislation is clear that only three Council members, including a community member, decide upon the appropriate disposition.

An amendment was made to remove previous wording that previously indicated the pre-hearing conference was to "promote settlement". An amendment was also made

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to provide that once the Notice of Hearing has been filed and the complaints process has become public, information will be posted on the Council’s website, subject to any order of the hearing panel, to inform the public that the justice of the peace has not been assigned work or has been reassigned to a different location as a result of an interim recommendation under s. 11(11) of the *Act*.

The Council made an amendment to make it clearer for the public and the media that the Council is the body with the primary responsibility for considering whether a justice of the peace should be suspended when there is a concern about judicial conduct. Although the Chief Justice and the judiciary have the authority to suspend a justice of the peace from working, the Review Council is the body with exclusive authority to address complaints about the conduct of a justice of the peace. The Council considered that without clarification in the JPRC Procedures, the media and members of the public may have an expectation that the Chief Justice should be acting to suspend a justice of the peace if information about a serious complaint is made public (for example, by a complainant). The new provision explains the Council’s role, while respecting the constitutional authority of the judiciary over assignment of justices of the peace.

A copy of the Council’s current procedures for the complaints process that incorporates the amendments made during 2018 is posted on the Review Council’s website under the link “Policies and Procedures at [www.ontariocourts.ca/ocj/jprc/policies-and-procedures/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/).

## 5. EDUCATION PLAN

The Associate Chief Justice Co-ordinator of Justices of the Peace of the Ontario Court of Justice is required, by section 14 of the *Justices of the Peace Act*, to establish, implement and make public a plan for the continuing judicial education of justices of the peace. The education plan must be approved by the Justices of the Peace Review Council. In 2007, a continuing education plan was developed by the Associate Chief Justice Co-ordinator of Justices of the Peace in conjunction with the Advisory Committee on Education. The Committee included the Associate Chief Justice Co-ordinator of Justices of the Peace as Chair (*ex officio*) and justices of the peace nominated by the Associate Chief Justice Co-ordinator of Justices of the Peace and by the Association of Justices of the Peace of Ontario.



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An Advisory Committee on Education of the Court reviews the education programs and may make recommendations to the Associate Chief Justice-Co-ordinator of Justices of the Peace on changes and additions to existing programs, and on the content and format of new programs as they are being proposed and developed. Any proposed changes are submitted to the Review Council for review and approval.

In 2018, the Continuing Education Plan was updated to replace references to “Native Justice of the Peace” with “Indigenous Justice of the Peace”. The title of the “Senior Justice of the Peace, Administrator of the Ontario Native Justice of the Peace Program” was updated to “Senior Indigenous Justice of the Peace”. Prior to 2018, there was a three day wrap-up session at the end of the Initial Education programs for new justices of the peace. The three-day workshop was found to be rendered redundant by the nature and quality of the education now being delivered in the preceding nine week-long workshops. Therefore, reference to the three day session was removed from the Continuing Education Plan. A copy of the current Education Plan can be found on the Council’s website under the link “Education Plan” at [www.ontariocourts.ca/ocj/jprc/education-plan/](http://www.ontariocourts.ca/ocj/jprc/education-plan/).


## **6. STANDARDS OF CONDUCT**

The Associate Chief Justice Co-ordinator of Justices of the Peace may, under section 13(1) of the *Justices of the Peace Act*, establish standards of conduct for justices of the peace and a plan for bringing the standards into effect and must implement the standards and plan when they have been reviewed and approved by the Review Council.

Further to section 13(1), the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* were approved by the Justices of the Peace Review Council on December 7, 2007. The principles set out standards of excellence and integrity to which justices of the peace should subscribe. These principles are not exhaustive. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they also serve to assist the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in their conduct generally.

The principles are advisory in nature. A breach does not automatically lead to a conclusion that there has been misconduct. However, the principles do set out a general framework





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of values and considerations that are relevant in evaluating allegations of improper conduct by a justice of the peace.

A copy of the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* is included as “Appendix C” in this Annual Report and can be found on the Council’s website under the link for “Principles of Judicial Office” at [www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/](http://www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/).


## **7. EXTRA-REMUNERATIVE WORK**

Under section 19 of the *Justices of the Peace Act*, all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council’s policy. The policy sets out criteria that are used in assessing applications including:

- ◆ whether there is an actual, or perceived conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;
- ◆ whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned; and,
- ◆ whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

The Council considers two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else’s remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council’s extra-remunerative policy are considered.



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One criterion to be considered by the Council in considering applications is whether the activity for which the justice of the peace seeks approval is a seemingly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality (paragraph 6(c) of the *Policy Re Extra-Remunerative Work*). The Council has considered how that criterion should be applied, and determined that it must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* and, in particular, in view of the amendments that resulted from the *Access to Justice Act*, 2006, S.O. 2006, c. 21. The legislative amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act*, 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, the Review Council determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work. The *Policy Re Extra-Remunerative Work* was amended to reflect the Council's decision.

The Review Council has approved some applications by full-time justices of the peace to engage in extra-remunerative work on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's policy and procedure, an applicant who seeks approval to engage in commercial activity must address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

The *Policy on Extra-Remunerative Work* is included as Appendix B in this Annual Report. The most recent version is posted on the Council's website under the link "Policies and Procedures" at [www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/).

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## **Summary of Extra-Remunerative Files Closed in 2018**

During 2018, the Council completed its consideration of one application for approval to engage in extra-remunerative work that was submitted in 2017, and received five new applications for approval.

The Council approved four of the applications received in 2018. The process for one application received in 2018 was still ongoing at the end of the year. Case summaries for the five completed files can be found at Appendix B in this Annual Report.

## **8. COMMUNICATIONS**


The website of the Justices of the Peace Review Council includes information about the Council, including the most current version of the policies and procedures, as well as information about hearings that are underway or that have been completed. Information on ongoing hearings is available under the link “Public Hearings” at [www.ontariocourts.ca/ocj/jprc/public-hearings/](http://www.ontariocourts.ca/ocj/jprc/public-hearings/). Decisions made during the hearings are posted under the link “Public Hearings Decisions” at [www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/](http://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/). Each Annual Report of the Council is also available on the website after it has been tabled in the legislature by the Attorney General.

The address of the Council’s website is: [www.ontariocourts.ca/ocj/jprc/](http://www.ontariocourts.ca/ocj/jprc/).

A brochure to inform the public about the process to make complaints about judges and justices of the peace is available in hard copy at courthouses or by contacting the Council’s office, and electronically on the website at [www.ontariocourts.ca/ocj/conduct/do-you-have-a-complaint/](http://www.ontariocourts.ca/ocj/conduct/do-you-have-a-complaint/). The brochure, “Do You Have a Complaint?” provides information on what a justice of the peace does, how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.

## **9. ACCOMMODATION OF NEEDS ARISING FROM A DISABILITY**

A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Council under section 5.2 of the *Justices of the Peace Act* for an order that such needs be accommodated.



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The Ministry of the Attorney General, with input from the Office of the Chief Justice, has a process that provides a consistent means for judicial officers to request accommodation of needs arising from disabilities. The Council recognizes that the Ministry has access to the expertise and resources to properly assess and address requests for accommodation of needs. In order that the Council can properly consider applications made to it, if any, the Council's Procedures require the applicant justice of the peace to first exhaust the accommodation of needs process that is available for judicial officers through the Ministry of the Attorney General. When that process has been completed, if the justice of the peace makes an application for an order of accommodation to the Council, he or she must provide a copy of all documents, medical evidence and decisions resulting from the application process.

The current procedure that governs such applications is included in the Council's Procedure which is posted on the website at [www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/](http://www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/). No applications for accommodation of needs were received in 2018.


## **10. OVERVIEW OF THE COMPLAINTS PROCESS**

### ***What initiates a review by the Review Council?***

Any person may make a complaint to the Review Council about the conduct of a justice of the peace. Complaints must be made in writing. The governing legislation and the principles of natural justice do not provide for the Review Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations submitted by a complainant. Most of the complaints received by the Justices of the Peace Review Council are received from members of the public.

### ***Does the Council have the legal authority to consider the complaint?***

The Review Council has a legislative mandate to review complaints about the **conduct** of justices of the peace. The Council has no authority to review **decisions** of justices of the peace to determine whether there were any errors in how the issues were determined or



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how conclusions were drawn. If a party involved in a court case thinks that a justice of the peace reached the wrong decision in the case, he or she has legal remedies through the courts. Only a court can change the original decision of a justice of the peace.

All correspondence is reviewed to determine whether or not a complaint is within the jurisdiction of the Review Council. In those cases where the complaint may be within the jurisdiction of the Review Council, a complaint file is opened and a letter of acknowledgement is sent to the complainant.

If the complainant expresses dissatisfaction with a decision that has been made by a justice of the peace, the letter of acknowledgement advises the complainant that the Council has no power to change a decision made by a justice of the peace. In such cases, the complainant is advised that he or she may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about his/her lawyer or paralegal, a police officer, a Crown Attorney, or another office, the complainant is generally referred to the appropriate agency or authorities.

### ***What happens in the complaints process?***

The *Justices of the Peace Act* and the procedures that have been established by the Council provide the current framework for addressing complaints about justices of the peace. If a complaint is ordered to a public hearing, certain provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below. The current procedures are posted on the Council's website at [www.ontariocourts.ca/ocj/jprc/policies-and-procedures/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/).

### ***Preliminary Investigation and Review***

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the office of the Council will acknowledge receipt of the complaint. If the complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed.



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This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

If there is no ongoing court proceeding, a complaints committee of the Council will be assigned to investigate the complaint. Members of the Council serve on complaints committees on a rotating basis. Each complaints committee is composed of: a provincially-appointed judge who acts as chair; a justice of the peace; and, either a community member or a lawyer member. Complaints are not generally assigned to members from the same region where the justice of the peace who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of Council and the justice of the peace.


Apart from hearings ordered under section 11(15)(c) of the *Justices of the Peace Act*, meetings and proceedings of the Review Council are not held in public. Section 11(8) of the *Act* requires that investigations by the Review Council must be conducted in private. The legislative framework recognizes the need to safeguard judicial independence while simultaneously ensuring judicial accountability and public confidence in the administration of justice.

If the complaint arose from a court proceeding, a transcript of the court hearing is ordered and reviewed by the members of the complaints committee. An audio recording, if available, may also be ordered and reviewed. In some cases, the committee may find that it is necessary to conduct further investigation in the form of having witnesses interviewed. An external lawyer may be retained, pursuant to section 8(15) of the *Act*, to assist the committee by interviewing witnesses and providing transcripts of the interviews to the investigating complaints committee. Legal advice may also be obtained.

The complaints committee will determine whether or not a response to the complaint should be invited from the justice of the peace in question. If a response is invited from the justice of the peace, the letter will be sent to him or her, inviting a response, and enclosing a copy of the complaint, the transcript (if any) and all of the relevant materials considered by the committee. The justice of the peace will also be invited to listen to the audio recording, if one has been ordered and reviewed by the committee. The justice of the peace may seek independent legal advice or assistance before responding.

Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a complaint after reviewing the complaint where, in the opinion

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of the committee: it is frivolous or an abuse of process; it falls outside the Council's jurisdiction (e.g. because it is a complaint about the exercise of judicial discretion); it does not include an allegation of judicial misconduct; the allegation is not substantiated; or, the allegation does not rise to the level of misconduct that requires further action on the part of the Council.

### ***Interim Recommendations***

The investigating complaints committee will also consider whether the allegation(s) warrants making an interim recommendation pending the final disposition of a complaint. Under section 11(11) of the *Act*, an interim recommendation for non-assignment of work or re-assignment to work at another court location may be made to the Regional Senior Justice appointed to the region to which the justice of the peace is assigned. The Regional Senior Justice may decide not to assign work to the justice of the peace until the final disposition of the complaint (but he or she will continue to be paid); or, with the consent of the justice of the peace, may re-assign him or her to another location until the disposition of the complaint. It is within the discretion of the Regional Senior Justice as to whether he or she decides to act upon the recommendation from a complaints committee.

The Review Council has approved the following criteria in the procedures to guide complaints committees as to when an interim recommendation should be made:

- ◆ where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;
- ◆ where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- ◆ where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;
- ◆ where it is evident to the complaints committee that a justice of the peace is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.



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Where a complaints committee considers recommending making an interim recommendation regarding assignment, it may give the justice of the peace an opportunity to make written submissions in writing before making its decision. Particulars of the factors upon which the complaints committee's interim recommendation is based are provided to the Regional Senior Judge receiving the interim recommendation, and to the justice of the peace.

The Procedures of the Review Council recognize that an exception to the general requirement of confidentiality in the complaints process is warranted if the criteria are met for a complaint to be referred to a hearing and for an interim recommendation that the justice of the peace not be assigned work or be reassigned to a different location pending the final disposition of the complaint. In such circumstances, once the Notice of Hearing has been filed and the complaints process has become public, the Review Council's website informs the public that the justice of the peace has been not assigned work or has been reassigned to a different location as a result of an interim recommendation.

In 2018, Notices of Hearing were filed and the complaints process was public in relation to four justices of the peace who had been non-assigned work as a result of interim recommendations.

### ***Dispositions of the Complaints Committee***

When the investigation is completed, pursuant to section 11(15) of the *Act*, the complaints committee will do one of the following:

- a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- c) order that a formal hearing into the complaint be held by a hearing panel; or,
- d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reports to the Review Council on its decision and, except where it orders a formal hearing, does not identify the complainant or the justice of the peace who is the subject of the complaint in its report.





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## ***Notification of Disposition***

After the complaints process is completed, the Review Council communicates its decision to the person who made the complaint and, in most cases, to the justice of the peace. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was invited by the Council. In accordance with the Procedures of the Review Council, if the Review Council decides to dismiss the complaint, it will provide brief reasons.

## ***Public Hearing Under section 11.1***

When the complaints committee orders a public hearing, under section 11.1(1) of the *Act*, the Chief Justice of the Ontario Court of Justice, who is also the Chair of the Review Council, establishes a three-member hearing panel from among the members of the Council, composed of: a provincially-appointed judge who chairs the panel; a justice of the peace; and, a lawyer or a member of the public. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

The legislation provides for judicial members to be appointed as temporary members of the Council to ensure that the three members of the hearing panel have not been involved in earlier stages of reviewing the complaint. The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel where necessary to form a quorum to meet the requirements of the *Act*.

By the end of the investigation and hearing process, all decisions regarding complaints made to the Justices of the Peace Review Council will have been considered and reviewed by a total of six members of the Council – three members of the complaints committee and three members of the hearing panel.

The Review Council engages legal counsel, called Presenting Counsel, for the purposes of preparing and presenting the case about the justice of the peace. The legal counsel engaged by the Review Council operates independently of the Review Council. The duty of legal counsel engaged to act as Presenting Counsel is not to seek a particular order against a justice of the peace, but to see that the complaint about the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.



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The justice of the peace has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.

The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints. Persons may be required, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.


### ***Public Hearing Unless Ordered Private***

A section 11.1 hearing into a complaint is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act*, that matters involving public security may be disclosed; or, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

In certain circumstances where a complaint involves allegations of sexual misconduct or sexual harassment, the Review Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness who testifies to having been the victim of the conduct. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

### ***Dispositions after section 11.1 Hearing***

After hearing the evidence, under section 11.1(10) of the *Justices of the Peace Act*, the hearing panel of the Review Council may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

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- ◆ warn the justice of the peace;
  - ◆ reprimand the justice of the peace;
  - ◆ order the justice of the peace to apologize to the complainant or to any other person;
  - ◆ order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
  - ◆ suspend the justice of the peace with pay, for any period; or,
  - ◆ suspend the justice of the peace without pay, but with benefits, for a period up to thirty days.

### ***Removal from Office***

Following the hearing, the Review Council may make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. A justice of the peace may be removed from office only if a hearing panel of the Review Council, after a hearing under section 11.1, recommends to the Attorney General under section 11.2 that the justice of the peace be removed on the following grounds:

- ◆ he or she has become incapacitated or disabled from the execution of his or her office by reason of inability to perform the essential duties of the office because of a disability and, in the circumstances, accommodation of his or her needs would not remedy the inability, or could not be made because it would impose undue hardship to meet those needs;
- ◆ conduct that is incompatible with the execution of the office; or
- ◆ failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the justice of the peace from office.



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## ***Recommendation of Compensation for Legal Costs***

When the Justices of the Peace Review Council has dealt with a complaint, section 11(16) of the *Justices of the Peace Act* makes provision for a justice of the peace to request that a complaints committee recommend to the Attorney General that he or she should be compensated for all or part of the costs of legal services incurred in connection with the investigation. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account for legal services to support the request. Similarly, section 11.1(17) allows a hearing panel to recommend compensation for all or part of the cost of legal services incurred in connection with a hearing.

In 2018, six recommendations for compensation for legal costs were made to the Attorney General by complaints committees or hearing panels.


## ***Legislation***

The current legislative provisions of the *Justices of the Peace Act* concerning the Justices of the Peace Review Council are available on the government's e-laws website at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca). The website contains a database of Ontario's current and historical statutes and regulations.

## ***11. SUMMARY OF COMPLAINTS CLOSED IN 2018***

### ***Overview***

The Justices of the Peace Review Council carried forward 35 complaints to 2018 from previous years. During 2018, 43 new complaint files were opened with the Review Council. Including those cases carried into 2018 from previous years, the total number of files open during 2018 was 78. Of the 78 open files in 2018, 45 files were completed and closed before December 31, 2018.



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Of the 45 files that were closed, 19 files were opened and closed in 2018, 19 were opened in 2017, four were in 2016 (including one file that was closed after a hearing, two that were referred to the Chief Justice and one that resulted in advice to the justice of the peace) and three were opened in 2015 (all three of which were closed after hearings).

Thirty-three of the 78 open files were still ongoing at the end of 2018 and carried over into 2019. Twenty-four were complaints filed in 2018. Five were complaints filed in 2017. Four were complaints that were filed in 2016 (three of which were the subject of a hearing at the time when this Report was written).

### ***Dispositions***

As indicated earlier, section 11(15) of the *Justices of the Peace Act* authorizes a complaints committee to:

- ◆ dismiss the complaint if it was frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- ◆ invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- ◆ order that a formal hearing into the complaint be held by a hearing panel; or,
- ◆ refer the complaint to the Chief Justice of the Ontario Court of Justice.

Of the 45 files addressed and closed, five complaints were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside of the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other legal remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Review Council.

Complaints within the jurisdiction of the Council included allegations such as improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias.



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Twenty-four complaints were dismissed by the Review Council under section 11(15)(a) after the allegations of misconduct were investigated by a complaints committee and determined to be unsubstantiated or unfounded, or the behaviour did not amount to judicial misconduct and no further action was required.


In one case, the Review Council provided advice in writing to a justice of the peace under section 11(15) (b) of the *Act*.

In 2018, five complaints were referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Act*. A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the committee is of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint and the complaints committee is of the view that a referral to the Chief Justice is a suitable means of informing the justice of the peace that his or her course of conduct was not appropriate in the circumstances that led to the complaint. The committee may recommend imposing conditions on its referral to the Chief Justice where the committee agrees that there is some course of action or remedial training of which the justice of the peace could take advantage and the justice of the peace agrees.

In two cases, the justices of the peace left office before the complaints process was completed. The Council lost jurisdiction and the files were administratively closed.

A public hearing is ordered pursuant to section 11(15)(c) where the complaints committee is of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. When a hearing is ongoing, updates on the status of the case are posted on the Review Council's website under the link "Public Hearings" at [www.ontariocourts.ca/ocj/jprc/public-hearings](http://www.ontariocourts.ca/ocj/jprc/public-hearings). At the end of a hearing, the decision can be found on the website under the link "Public Hearings Decisions".

Of the files closed in 2018, eight complaints about the conduct of five justices of the peace (three related to the conduct of Justice of the Peace Robert McNally) were the subject of hearings.



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Two hearings resulted in recommendations from Hearing Panels to the Attorney General that the justice of the peace should be removed from office. His Worship Tom Foulds and His Worship Richard Bisson were subsequently removed from office.

The Hearing Panel presiding over a hearing about the conduct of His Worship Paul Welsh imposed a combination of dispositions including: a formal reprimand; a requirement that His Worship apologize to a person impacted by his misconduct; as a condition of continuing to sit as a justice of the peace, additional judicial education or training to reinforce his awareness of appropriate judicial boundaries and relationships, and formal management of courtroom processes and communication with justice partners; and, a suspension without pay, but with benefits, for a period of ten (10) judicial days.

The Hearing Panel presiding over a hearing about the conduct of Her Worship Adele Romagnoli imposed a combination of dispositions including: a formal reprimand; as a condition of Her Worship continuing to sit, an order that Her Worship receive additional judicial education or training to reinforce Her Worship's duty to maintain professional competence in the law, teach her the law governing joint submissions, teach her the application of stare decisis and the effect of binding and non-binding precedents, and reinforce her duty to remain impartial and avoid any perception of unfairness or differential treatment.

Four files were closed where the justices of the peace (three complaints arising from one court proceeding about the conduct of His Worship Robert McNally and one complaint about the conduct of His Worship Alfred Johnston) retired before evidence was presented in the hearings. The Council lost jurisdiction to proceed and the files were closed.

Hearing decisions are posted on the Review Council's website on the webpage "Public Hearings Decisions 2018" at <http://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>.

At the time when this report was written, public hearings were also underway arising from complaints about the conduct of Justice of the Peace John Guthrie, Justice of the Peace Julie Lauzon, Justice of the Peace Paul Welsh and Justice of the Peace Claire Winchester.



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Updates on ongoing hearings are provided on the Review Council’s website at <http://www.ontariocourts.ca/ocj/jprc/public-hearings/>.

A hearing about the conduct of Justice of the Peace Errol Massiah resulted in his removal from office in 2015. Mr. Massiah filed an application for judicial review of the decisions made by the Hearing Panel during the hearings process, including the recommendation for his removal from office and the decision that he should not be compensated for his legal costs. In 2016, the Divisional Court dismissed his application for judicial review with one exception. The decision of the Panel not to recommend compensation for legal fees was set aside and that single issue was remitted back to the Panel for reconsideration. Applications by Mr. Massiah and by the Review Council for leave to appeal to the Court of Appeal for Ontario were dismissed. Mr. Massiah filed an application seeking leave to appeal to the Supreme Court of Canada. Leave was denied.

A new Hearing Panel was of the view that a recommendation that Mr. Massiah be compensated for his legal costs would be contrary to the public interest and inconsistent with the objectives of the judicial discipline process. The Panel dismissed Mr. Massiah’s request for a recommendation that he receive compensation for the costs of legal services incurred in connection with the hearing. Mr. Massiah filed an application for judicial review of the decision. The application had not been heard at the time when this Report was written.

### ***Types of Cases***

Of the 45 files that were completed and closed in 2018, 17 complaints arose from events during provincial offences proceedings, 14 arose from matters in Intake Court, three pre-enquêtes, six bail hearings, three from criminal set-date court, and two related to conduct outside of the courtroom.

### ***Case Summaries***

Case summaries for each complaint file closed during 2018 follow in Appendix “A” of this Report.



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## **SUMMARY OF COMPLAINTS CLOSED IN 2018**

<b>DISPOSITIONS ON COMPLAINTS CLOSED IN 2018</b>	
Dismissed as out of jurisdiction	<b>5</b>
Dismissed as not substantiated or did not amount to misconduct	<b>24</b>
Advice Letter	<b>1</b>
Advice - In-person	<b>0</b>
Referred to Chief Justice	<b>5</b>
Loss of jurisdiction (excluding public hearings)	<b>2</b>
Hearing*	<b>8</b>
<b>TOTAL CLOSED IN 2018</b>	<b>45</b>

\*Jurisdiction was lost over 4 complaints when Justice of the Peace McNally and Justice of the Peace Johnston retired before evidence was called in the hearings.

## DISPOSITIONS IN FORMAL HEARINGS IN 2018\*

Decisions made in relation to each of the hearings are posted on the Council's website on the webpage Public Hearings Decisions 2018 at

<http://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>

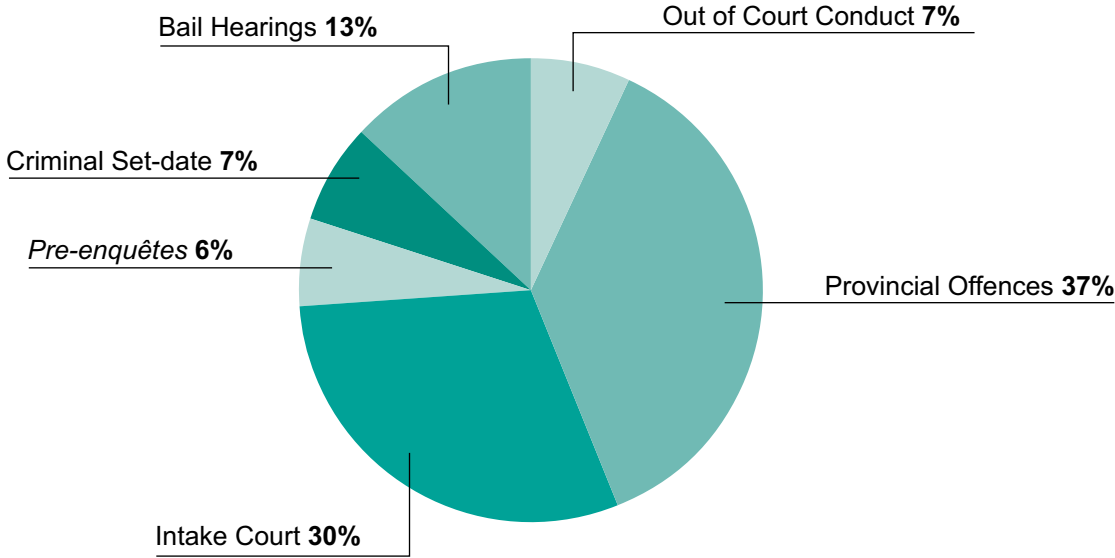
JUSTICE OF THE PEACE	# OF COMPLAINTS	DISPOSITION
His Worship Richard Bisson	1	Recommendation for removal from office
His Worship Tom Foulds	1	Recommendation for removal from office
His Worship Alfred Johnston	1	Retired – loss of jurisdiction
His Worship Robert McNally	3	Retired – loss of jurisdiction
Her Worship Adele Romagnoli	1	Reprimand; additional judicial education or training
His Worship Paul Welsh	1	Reprimand; order that His Worship apologize; additional judicial education or training; a suspension without pay, but with benefits, for a period of ten (10) juridical days
<b>TOTAL FILES CLOSED IN 2018*</b>		<b>8</b>

\* A hearing about the conduct of Justice of the Peace Errol Massiah resulted in his removal from office in 2015. In 2016, the Divisional Court remitted back to the Hearing Panel the question of whether there should be a recommendation to the Attorney General that Mr. Massiah should be compensated for his legal costs.

In 2018, a new Hearing Panel decided against making a recommendation for compensation for the legal costs. Mr. Massiah filed an application for judicial review of the decision. The application had not been heard at the time when this Report was written.

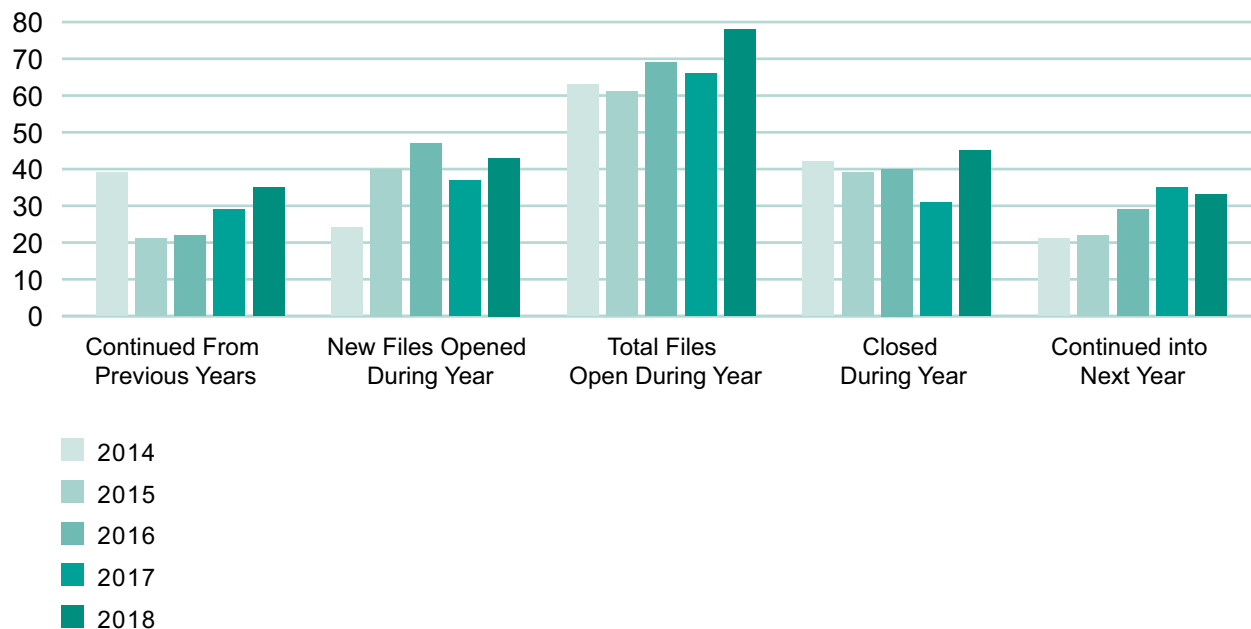
## TYPES OF CASES CLOSED IN 2018

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	17
Intake Court	14
Bail Court	6
Set-date Court	3
<i>Pre-enquêtes</i>	3
Out of Court Conduct	2
<b>TOTAL</b>	<b>45</b>



## CASELOAD IN CALENDAR YEARS

	2014	2015	2016	2017	2018
Continued From Previous Years	39	21	22	29	35
New Files Opened During Year	24	40	47	37	43
Total Files Open During Year	63	61	69	66	78
Closed During Year	42	39	40	31	45
Continued into Next Year	21	22	29	35	33



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**APPENDIX A**

**2018**  
**CASE SUMMARIES**

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# Case Summaries

Complaint files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., Case No. 29-001/18 was the first file opened in the period of reporting and opened in calendar year 2018).

Except where a public hearing was ordered, details of each complaint for which the complaints process was completed, with identifying information removed as required by the legislation, are provided below. Decisions on public hearings are provided in other appendices in this Annual Report.

### **CASE NO. 27-028/16**

The complainant appeared before the justice of the peace in provincial offences court. In his letter to the Review Council, the complainant alleged that the justice of the peace's conduct gave rise to a reasonable apprehension of racial and gender bias. He indicated that he was of Middle Eastern descent and his wife was "white", and in his opinion, their names were reflective of such.

He alleged that Her Worship seemed to take issue with him acting as his wife's agent, even though he told Her Worship that his wife had to be at home to nurse their youngest child. He alleged that Her Worship appeared to question his relationship with his wife, making comments such as "it's your wife or significant other or partner or whatever the term is'."

The complainant perceived that the justice of the peace may be prejudiced and that she may have assumed that the complainant would not permit his wife to leave the house to come to the trial. He queried whether Her Worship was making stereotypical comments about Middle Eastern men because his wife was not present in court. He alleged that Her Worship said, "It's so awkward that you're not willing to allow your wife to come." He questioned why Her Worship would make such an assumption. He said that he said nothing that would suggest that he forced his wife to stay home, and the only explanation he could think of is that the justice of the peace assumed that because he was from the Middle East, he was forcing his wife to stay at home.

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### Case Summaries

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He also said that the justice of the peace insisted that everything he said was hearsay even though the police officer and the defendant made it clear that he was with his wife in the car. He alleged that either Her Worship was not paying attention or this is more evidence of bias against having a Middle Eastern man represent a “white” wife whom the justice of the peace assumed was forced to stay at home.

The complaints committee reviewed the letter of complaint and ordered and reviewed the transcript and the audio recording of the proceeding. The committee noted that Her Worship’s application of the law on hearsay was a matter of judicial decision-making outside the jurisdiction of the Council.

The committee observed that the transcript showed that the justice of the peace took issue with the complainant acting on behalf of his wife, asking inappropriate questions about his children, and whether his wife was breastfeeding. The transcript showed that Her Worship said:

The Court: It’s so awkward that you’re not willing to allow your wife to come, like just – okay, stay focused only on you.

Her Worship also said:

The Court: Okay, we’ll try it; if this is what you want. It’s your wife or your significant other or partner or whatever the term is. [...]

The committee observed that Her Worship’s conduct towards the complainant appeared to be condescending, discourteous and unhelpful. The committee was also concerned that at times she interrupted the complainant and did not permit him an opportunity to speak.

The complaints committee noted that a justice of the peace’s courtroom conduct symbolizes the law in action. A justice of the peace has a unique role as exemplar and guardian of the dignity of the court. He or she has a responsibility to conduct himself or herself in a manner that promotes public confidence in the integrity, impartiality and fairness of the judiciary.

The committee observed that the Ontario Human Rights Commission has made it clear that people may experience racial discrimination because of stereotyping, which involves attributing the same (often negative) characteristics to all members of a group, regardless

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# Case Summaries

of individual differences. The Commission notes that even those who are well-meaning and not overtly biased can nevertheless stereotype. This can contribute to an unwelcome and discriminatory environment for racialized persons.

The committee noted that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* and the duty set out in Principle 1.1 which states:

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

The committee noted that the specialized language of the courts can act as a barrier to self-represented litigants. Even when litigants think they understand the terms, they may be incorrect and may not understand what step they are supposed to take or refrain from taking. A self-represented litigant may not be familiar with each of the procedural steps and may not know how to raise objections, how to ask relevant questions, or how to otherwise receive their due process rights. A justice of the peace may need to explain procedure simply, and create an environment in which the relevant facts and arguments are brought out for a fair determination.

The committee invited the justice of the peace to respond to the complaint and reviewed Her Worship's response. The committee observed that Her Worship recognized that she could have used more effective words. The committee concluded that Her Worship may not fully understand how her conduct gave rise to the complainant's perception that she was expressing stereotypes about Middle Eastern men or that she may be racist.

The complaints committee decided to refer the complaint to the Chief Justice of the Ontario Court of Justice. Under the Procedures of the Review Council a complaints committee may refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaints committee may impose conditions on its referral to the Chief Justice of the Ontario Court of Justice if, in its opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage.



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The committee referred the complaint on the condition that the justice of the peace was prepared to take training, as recommended by the Chief Justice, which included the subject of cultural competence.

After Her Honour's meeting with the justice of the peace, the Chief Justice provided a report to the complaints committee. The Chief Justice discussed with Her Worship the high standards of conduct expected of justices of the peace, as well as each of the concerns raised by the complaint. The committee noted that the Chief Justice had arranged for Her Worship to have remedial education that included the topics of gender and cultural sensitivity. During the education program, the person leading the training also explored the concerns that can arise from racial bias and gender biased language, questions and opinions. Strategies for maintaining gender sensitivity and cultural sensitivity were reviewed with Her Worship. After reviewing the report, the committee observed that Her Worship said that she felt confident that she could apply the lessons learned from the further education to her daily interactions with those who appear before her in court in the future.

After reviewing the report, the complaints committee closed the file.

### **CASE NO. 27-031/16**

The complainant alleged that his relative attended in Intake Court before a justice of the peace to obtain a Form 2 under the *Mental Health Act* to require him to undergo an examination by a physician. He alleged that his relative told the justice of the peace that the complainant had a history of mental health issues and that he was a danger to himself and to her. Her Worship issued a Form 2. The complainant said that his relative took the Form 2 to the police, who arrested him at his workplace and took him to the psychiatric ward of a hospital where he was assessed and released. He said this was part of his relative's scheme to have him "mentally institutionalized".

The complainant alleged that a few days later, the same relative attended before the same justice of the peace seeking another Form 2. Her Worship signed the Form 2 based upon the same information, and the complainant was once again arrested by officers, this time at his home. He was taken to a different hospital, selected by his relative, and again assessed and released.

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# Case Summaries

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The complainant said that he was humiliated and he believed he suffered damage to his reputation. The complainant alleged that, as a result of the vexatious complaints by his relative, he attended at the police station and provided a video statement. He alleged that his relative was then charged with a criminal offence.

Given that the related criminal process was still ongoing, the complainant was informed of the Council's policy that if a complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

Subsequently, the complainant contacted the office of the Review Council and confirmed that the criminal charge had been withdrawn. The court proceedings had concluded. An investigation then proceeded into the complaint.

The complainant alleged that Her Worship was both biased and negligent in performing her duties. He alleged that his relative's statements, which led to the issuance of the Form 2, were unsubstantiated and were hearsay. As well, he alleged that his relative's second application for a Form 2 was virtually verbatim of her first application. He queried with what level of scrutiny the allegations and documentation from his relative were examined, and raised questions that he believed Her Worship should have asked of his relative. The complainant also raised his concern that Her Worship appeared to have disregarded the report of the first psychiatrist indicating that he was of good mental health when she issued the second Form 2 such a short time later.

The committee reviewed the correspondence from the complainant, along with the materials that he enclosed. The committee ordered and reviewed the transcripts and audio recordings of the two appearances by his relative before the justice of the peace.

The committee noted that the Preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and

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integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The *Principles* also state:

1.2 Justices of the peace have a duty to follow the law.

*Commentaries:*

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

2.4 Justices of the peace have a duty to maintain their professional competence in the law.

The committee noted that the *Principles* also state:

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

*Commentaries:*

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

The committee noted the important principle that justice must not only be done; it must be seen to be done. The appearance of impartiality is important to maintain public confidence in the administration of justice.

The committee observed that the audio recording did not appear to have been turned on throughout Her Worship's interaction with the complainant's relative. It appeared that at some points, Her Worship may have turned off the recording. The committee noted that when a person attends at the courthouse to see a justice of the peace, any dialogue about a court case should take place in the courtroom, where all comments can be captured on the record and it is clear to the public what information forms the basis for any decision made by the justice of the peace. Every justice of the peace must be very mindful of how important it is to have a proper record of the decisions made in judicial proceedings. Public confidence in the administration of justice depends upon transparency in the process and

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having a means of demonstrating how and why decisions have been rendered that affect a person's rights and freedoms.

The committee was of the view that the case of *R. v. Billingham* 1995 CanLII 7224 (ON SC) indicates that a justice of the peace has a duty to ensure there is a complete record of all proceedings. Further, within the complaint review process, the court record is often the best and most objective evidence available to inform the committee as to what happened in court.

The committee noted that the transcripts showed that Her Worship issued both Form 2's, a few days apart. The relative appeared before Her Worship on both instances and Her Worship determined each time that there was a basis to issue a Form 2 to have the complainant examined by a doctor.

The committee observed that, at one point in the transcript of the second appearance, Her Worship made a comment about the circumstances put forward by the complainant's relative that "This is like...television or a movie." The committee also observed comments in the transcript in which Her Worship appeared to express her personal disagreement with and criticism of the way in which the police or doctors responded in carrying out their duties in relation to the first Form 2.

The committee observed that Her Worship's manner and interactions with the relative appeared to be casual and informal. The committee noted that each and every comment made by a justice of the peace, and the tone and manner used, can affect how a justice of the peace is perceived by members of the public, and whether he or she is perceived to remain impartial.

The committee invited Her Worship to respond to the complaint and reviewed and considered her response.

The committee noted that Her Worship's response to the complaint indicated that Her Worship had no conversation with the relative that was not recorded. Her Worship explained that at times, she may turn off the recording to deal with other matters when interrupted by an administrative assistant.

The committee observed that the response showed that Her Worship had reflected on the complaint and understood the need to choose her words more carefully in the

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future and to avoid making comments that may give rise to a perception that she failed to remain impartial.

The committee noted Her Worship's decisions to grant the two Form 2s were intricately connected to the exercise of judicial discretion. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to change a decision made by a justice of the peace or to act on complaints that do not fall within its jurisdiction. Mindful of the need to respect the right of constitutionally-protected judicial independence, the committee carefully considered whether the allegations about Her Worship's decisions were within its jurisdiction and whether there was evidence that would support a finding of judicial misconduct in relation to those allegations. The committee concluded that Her Worship's determinations that she should sign the two Form 2s were a matter of judicial decision-making outside of the Review Council's jurisdiction.

However, the committee was concerned that Her Worship may not fully realize how the cumulative impact of her conduct and decisions were perceived by the complainant and his perception that the justice system failed to protect his rights and liberty.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations are handled and individuals are treated in the future. The complaints committee decided to refer the complaint to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15) (d) of the *Justices of the Peace Act*. Under the Procedures of the Review Council, a complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint.

A complaints committee may impose conditions on its referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage. The committee referred the complaint to the Chief Justice on the condition that Her Worship was prepared

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to take training, as recommended by the Chief Justice, including training on the procedure for reviewing and ordering Form 2's under the *Mental Health Act*.

After the Chief Justice met with Her Worship, the Chief Justice provided a report to the committee. The committee observed that the report showed that the Chief Justice had carefully reviewed and discussed with Her Worship the concerns raised by the complaint.

The Chief Justice reported that Her Worship was provided with training on the procedures for reviewing and ordering Form 2's under the *Mental Health Act*. The training included the technical requirements for granting a Form 2, the importance of a justice of the peace not appearing to take sides during a Form 2 proceeding, the importance of always remaining on the record, and the importance of being mindful not to engage in personal conversations with applicants.

After receiving the report from the Chief Justice, the committee closed the file.

### **CASE NO. 27-041/16**

The complainant, a landlord, said that he attended Intake Court twice to lay a criminal charge against his tenant. The complainant said that he appeared before the same justice of the peace both times.

The complainant said that he was asked to pen down his complaint but when he asked for a photocopy of the complaint, the clerk, in consultation with the justice of the peace, refused to give him a copy.

The complainant alleged that when he entered the justice of the peace's office, His Worship asked him to swear on the Bible "as opposed to be given a choice of various holy texts and affirmation, which I understand is the customary practice." He questioned why he was not at least given an opportunity to affirm.

He alleged that his complaint was "easily brushed aside". Further, he alleged that when he said to His Worship, "How would you feel if I did this to you, as it was done to me?", His Worship responded, "You do that and you...." and he trailed off.

The complainant alleged that His Worship's conduct was unacceptable procedurally and emotionally. The complainant believed that he did not receive a fair hearing. He stated,

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“Instead of directing me to the proper section of the *Criminal Code*, he belittled my wider net of criminal charges that I attempted based on my limited knowledge of Canadian *Criminal Code*.”

The complainant also alleged that His Worship declined to give his name to the complainant. The complainant questioned, “Is the Justice system known to be transparent or was he trying to be opaque?”

The complainant did not know the name of the justice of the peace before whom he appeared. There was a delay in the complaints process while court staff attempted to confirm the name of the justice of the peace who presided when the complainant appeared in Intake Court. After the name of the justice of the peace was provided and confirmed, the complaints committee proceeded with its investigation.

The complaint was assigned to a three-person complaints committee of the Review Council, consisting of a judge, a justice of the peace and a community or lawyer member for review and investigation. The committee reviewed the letters from the complainant and ordered the transcripts and audio recordings of the complainant’s two appearances before His Worship. The committee received and reviewed the transcript and audio recording of the first appearance. Court staff informed the committee that there was no actual transcript of the second appearance; court staff provided a transcript of a short after-the-fact summary describing the appearance provided by His Worship. The committee reviewed the transcript of the summary about the second appearance.

The committee noted that if a person has a complaint about the manner in which court staff handled a request for a copy of documents, the appropriate person to contact is the Manager of Court Operations.

The committee did not find evidence to support the allegation that the complainant said to His Worship, “How would you feel if I did this to you, as it was done to me?”, and His Worship responded, “You do that and you...” and he trailed off. Nor did the committee find evidence in the transcript that His Worship refused to provide his name to the complainant.

The committee noted that before a person gives evidence before a judicial officer, he or she should be asked if he or she wishes to take an oath or make an affirmation that the evidence is true. The difference between an oath and an affirmation is that the oath is a

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religious commitment where as an affirmation is non-religious. The committee observed that the transcript of the first appearance showed that His Worship did not provide the complainant with the option of an affirmation, and instead instructed the complainant to put his hand on the bible.

The committee was concerned by the manner in which the justice of the peace addressed the complainant's application to have process issued. The committee could understand why the complainant perceived His Worship to be dismissive towards the complainant and appeared to address the complainant's application in a manner inconsistent with the responsibility of a justice of the peace presiding over a proceeding to determine whether an Information should be received.

The committee noted that at the preliminary stage in the criminal justice process, section 504 of the *Criminal Code* states that a justice of the peace who has reasonable grounds to believe that the person has committed an offence known to law shall receive the Information. It is not the role of a justice of the peace who is receiving the Information to assess the evidence or to try to assess whether the accused person may have a defence.

If an Information is received, the next step is a separate hearing (called a pre-enquête) before a different justice of the peace who must determine whether the person alleged to have committed the offences described in the sworn Information should be required to appear to answer to those charges.

The committee observed that the court record confirmed that the justice of the peace declined to permit the matter to proceed to a pre-enquête and told the complainant to go to the police to see if they could lay a charge.

The committee observed that the transcript of the first appearance indicated that the justice of the peace made comments to the complainant that may have been perceived as His Worship's opinions of the obligations of landlords and tenants under the *Landlord and Tenant Act*, and his view of whether the landlord and tenant had met their obligations under that *Act*.

The committee could understand how the manner in which the justice of the peace handled the complainant's request and the comments made by His Worship left the complainant with the perception that His Worship was not impartial in his dealings with the complainant.



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The committee noted that a high standard of conduct is expected of justices of the peace. The preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The committee notes that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* include the following:

- 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

*Commentaries:*

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

The committee was of the view that justice must not only be done, it must be seen to be done.

With respect to the absence of a proper transcript for the second appearance, the committee noted that His Worship did not record the proceeding. Rather, it appeared that His Worship had the audio recorder turned off and then provided his narrative summary of the events after the complainant had left. The committee was concerned that there was no proper record of the second appearance.

The committee invited His Worship to respond to the complaint. After reviewing the response, the committee could see that His Worship now appreciated that suggesting that a person swear on the Bible can create a perception of bias, which the justice system should avoid. The committee noted that His Worship indicated that from now on, he would refrain from suggesting that a person should swear on the Bible.

After reviewing His Worship's response, the committee was satisfied that His Worship's failure to record the proceeding on the second date was an error and it was not intentional.

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He had turned the recording off during a private conversation with another justice of the peace. As soon as he realized that he had not turned it back on, His Worship summarized the interaction. The committee noted that in his response, His Worship undertook that in the future, he would make sure that the recording was always on.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations are handled and individuals are treated in the future. The complaints committee decided that the appropriate disposition was to provide the justice of the peace with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*. Under the Review Council's Procedures, a complaints committee provides advice to a justice of the peace in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint, and advice is, in the opinion of the committee, a suitable means of informing the justice of the peace that his or her conduct was not appropriate.

The committee advised His Worship that public confidence in the judiciary and in the administration of justice can be negatively impacted if the high standards of excellence expected of a justice of the peace are not upheld.

The committee reminded His Worship that a justice of the peace has a duty to remain objective, to listen to the person appearing before him or her, and to decide each matter based upon the available information and facts before him or her. A justice of the peace is expected to politely and respectfully listen to the person appearing in the courtroom and to refrain from making decisions based upon his or her personal views.

The committee reminded His Worship of the legal requirements of section 504.

The committee noted that if a person disagrees with the decision of a justice of the peace to refuse to receive an Information, a lawyer is in the best position to advise that person whether he or she has legal remedies to overturn the decision. In the event that the complainant may disagree with a decision made by a justice of the peace in the future, the committee provided the complainant with information about the Law Society Referral Service. The Law Society Referral Service can provide a person with the name of a lawyer or licensed paralegal who will provide a free consultation of up to 30 minutes to help him or her determine his or her legal rights and options. A referral can be made through the website online at <https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service>.

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After providing His Worship with its advice, the complaints process was completed and the committee closed the file.

### **CASE NO. 28-006/17**

The complainant attended Intake Court seeking to lay private charges against an individual. She filed a letter of complaint about the presiding justice of the peace.

She alleged that the justice of the peace initially refused to listen to her case, arguing that he had to leave and did not have the time to listen to her. She said that she informed him that she understood that the office of the justice of the peace was open until 4:00 p.m., and that her case had been already heard in court. She alleged that the justice of the peace reluctantly allowed her to enter. She alleged that the behaviour of the justice of the peace throughout the appearance was “rude and less than cooperative”.

She also indicated in her letter that she explained to His Worship that her previous court matter was dismissed, and that she was now seeking to lay different charges. She says that the justice of the peace filled out forms and took them to the office for typing, then returned and asked her to swear and sign the form for a hearing.

She indicated that upon reviewing the documentation, she discovered that the justice of the peace:

- ◆ “just repeated the same information as on the first case”;
- ◆ did not enter the new developments since the prior court appearance, nor the charges; and,
- ◆ did not refer to the correct sections of the *Criminal Code* that applied to her new case.

The complainant alleged that after she refused to sign the form, the justice of the peace “angrily took all the papers and told me he was going to throw them to the garbage.” She indicated that His Worship asked her to leave and they started to argue, but the complainant then decided that it was better for her to leave and she did so.

The complainant stated that after arriving home, she discovered that the justice of the peace had failed to return the documents relating to her first court case. However, the

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complainant had a retained a copy. She stated that on the next day she returned to the courthouse and was informed by court staff that her documents could not be located. She expressed concern that the justice of the peace threw them in the garbage. She requested an investigation into his behaviour.

She concluded her letter by noting that her case “keeps on being dismissed”. She did not understand why the police and/or the Court were refusing to give her justice.

The complaints committee reviewed the letter of complaint. The committee noted that decisions made by justices of the peace are outside the jurisdiction of the Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s jurisdiction is limited to the investigation of complaints about the conduct of justices of the peace.

The committee requested and reviewed the transcript and audio recording of the proceeding before the justice of the peace about whom she complained.

The committee noted that the transcript indicated that there was a prior proceeding related to the facts put forward by the complainant. The committee observed that during the proceeding before His Worship, the complainant appeared to be confused by instructions she was given on the prior date, and she was seeking to explain to His Worship what she was requesting. The transcript indicated that His Worship appeared to interrupt her. She sought to look at the forms to address an apparent misunderstanding. The committee listened to the audio recording and observed that His Worship appeared to be frustrated with the self-represented litigant. His Worship’s tone appeared to be abrupt and his manner appeared to become impatient with her.

The committee observed that the transcript showed that His Worship said to the complainant:

The Court: I can see where they had a problem with you at Fido.

The committee observed that the transcript showed that the complainant reiterated her request to change the original documentation, and His Worship became short with the complainant, rather than fulfilling the role of a justice of the peace by patiently explaining the process to her.

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The committee noted the remarks of the Supreme Court of Canada in *Re: Therrien*, 2001 SCC 35 where the Court stated:

110. ... the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

(Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

111. The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.

The committee noted that because of the role carried out by justices of the peace in the justice system, they must foster respect for their decisions and for the judiciary as a whole. Because they hold positions of considerable authority, justices of the peace are expected by the public to conduct themselves according to high standards of professional conduct.

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The committee noted that the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The committee observed that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* include the following:

*Commentaries:*

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

The committee also noted that a judicial officer has an obligation to assist an unrepresented litigant who appears before him or her. The Court of Appeal for Ontario stated the following in *R. v. Richards*, 2017 ONCA 424:

[110] Where an accused is self-represented, a trial judge has a duty to ensure that the accused has a fair trial. To fulfill this duty, the trial judge must provide guidance to the accused to the extent the circumstances of the case and accused may require. Within reason, the trial judge must provide assistance to aid the accused in the proper conduct of his defence and to guide him as the trial unfolds in such a way that the defence is brought out with its full force and effect: *R. v. Chemama*, 2016 ONCA 579 (CanLII), 351 O.A.C. 381, at para. 13; *R. v. Tran* (2001), 2001 CanLII 5555 (ON CA), 156 C.C.C. (3d) 1 (Ont. C.A.), at para. 22; *R. v. McGibbon* (1988), 1988 CanLII 149 (ON CA), 45 C.C.C. (3d) 334 (Ont. C.A.), at p. 347.

[111] The duty owed by trial judges to self-represented litigants is circumscribed by a standard of reasonableness. The trial judge is not, and must not become, counsel for the accused. The judge is not entitled, indeed prohibited, from providing the assistance of the kind counsel would furnish

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when retained to do so: *Chemama*, at para. 14; *R. v. Taubler* (1987), 20 O.A.C. 64 (C.A.), at para. 30; *R. v. Turlon* (1989), 49 C.C.C. (3d) 186 (Ont. C.A.), at p. 191; *McGibbon*, at p. 349. A standard of reasonableness accommodates a range of options to ensure the necessary degree of assistance and eschews a single exclusive response.

[112] The onus on the trial judge to assist the self-represented accused is a heavy one. This characterization means that it is not enough that the verdict at the end of the trial is or appears correct. What matters is whether the trial has been fair to the self-represented accused: *Tran*, at para. 31; *R. v. Dimmock* (1996), 1996 CanLII 2292 (BC CA), 47 C.R. (4th) 120 (B.C. C.A.), at para. 20.

Justices of the peace conducting proceedings under the *Provincial Offences Act* have the same obligation to render assistance to unrepresented defendants: *R. v. Rijal*, 2010 ONCJ 329.

The committee observed that the transcript appeared to show His Worship telling court staff to throw documents in the garbage. When the complainant asked to see the documents, His Worship refused to permit the complainant to do so.

The committee sought to understand what documents may have been “thrown in the garbage” at the direction of His Worship. The committee observed that there are shredding procedures in courthouses to destroy court documents that no longer require retention as part of a court record but that may contain personal information.

The complaints committee invited His Worship to respond to the complaint.

The committee observed from His Worship’s response that he had carefully reviewed the transcript to assist him in recalling the events that occurred on the date in question. The committee could see that he had taken very seriously the concerns raised by the complainant and the complaints committee.

The committee noted that His Worship explained that on the date in question, the complainant attended Intake Court shortly before the closing of Court with her request to lay a private complaint. She had a considerable amount of documentation. The committee could see from His Worship’s response that he recognized and accepted that regardless of the circumstances and challenges in executing his role as a justice of the peace, he is expected to conduct himself as dignified, patient, courteous and professional.

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With respect to the complainant's concern that His Worship may have destroyed her documents, after reviewing His Worship's response, the committee was satisfied that His Worship discarded blank documents, not the complainant's documents.

The committee observed that His Worship acknowledged the committee's concerns. After reading the transcript, he recognized that he was impatient and that his comment to the complainant in relation to the complainant's interactions with Fido was rude and inappropriate. Through the committee, His Worship apologized to the complainant for his demeanour and the inappropriate comment.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. After completing its investigation, the committee concluded that no further action was required and the complaint was dismissed. The file was closed.

### ***CASE NOS. 28-007/17 AND 28-011/17***

The complainant sent three letters to the Council alleging that while he was incarcerated, two justices of the peace broke his human rights and his rights as a person with mental illness by making improper decisions against him.

He alleged that he asked the justices of the peace to release him and to call an ambulance for urgent medical attention. He said that he asked that he not be sent to jail in a small van because he was claustrophobic. He alleged that by ignoring his mental disability, the justices of the peace were breaking human rights for the mentally disabled while traumatizing him in the process.

The complaints committee reviewed the complainant's letters and enclosures that he provided, including medical information. The committee ordered and reviewed the transcripts of the proceedings before both justices of the peace. The committee observed that the transcripts did not support the allegations that the justices of the peace "broke his human rights" or disregarded his illness. The committee found that both justices of the peace were considerate of the need to accommodate and address the complainant's health condition.



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### **Case No. 28-007/17**

The committee observed that the transcript of the first appearance before this justice of the peace showed that Duty Counsel appeared for the complainant and asked that the remand warrant be marked for medical attention and the justice of the peace made the order.

The committee observed that the transcript of the second appearance showed that after a contested bail hearing, the justice of the peace decided to release the complainant on a recognizance with bail conditions that included a requirement that he be amenable to working with a mental health worker.

The committee noted that if the complainant disagreed with the bail conditions, that was a matter of judicial decision-making outside the jurisdiction of the Council. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

### **Case No. 28-011/17**

The committee observed that the transcript of the first appearance before the justice of the peace showed that Duty Counsel appeared for the complainant and told the court that they were awaiting a medical plan for the complainant. Duty Counsel explained steps being taken to assist the complainant. The justice of the peace patiently explained to the complainant that work was underway to put together a bail plan and that the mental health worker wanted to speak to the complainant's doctor.

The justice of the peace was responsive to the complainant's concern about claustrophobia in the van and made inquiries to see whether the complainant could appear by video on the following day and she was informed by counsel that doing so could impact on the complainant's release if a plan were ready. The justice of the peace directed that the records be marked "for medical attention".

The committee observed that the transcript of the second appearance before this justice of the peace showed that after the complainant raised his medical condition, the Assistant Crown Attorney suggested that there should be mental health elements in the bail plan

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and the justice of the peace agreed. The justice of the peace ordered that the warrant of remand be marked for medical attention.

For the reasons noted, the complaints committee dismissed both complaints and closed the files.

### **CASE NO. 28-012/17**

The complainant appeared on behalf of a friend before the justice of the peace with respect to *Provincial Offences Act* charges in relation to the friend's dog. The complainant alleged that after a guilty plea was entered on one charge and other charges were withdrawn, the prosecutor put forward a joint submission and Her Worship then "went on a tirade" referring to a case that she dismissed previously that involved the same dog. The complainant alleged that without any further discussion, Her Worship tripled the fine.

The complainant indicated that Her Worship's conduct was very unprofessional, as she proceeded to hear the case when she knew all along that she heard a prior case involving the same defendant and dog. He stated in his letter, "She was definitely in a conflict of interest and lacking ethics." He also referred to a case from the Supreme Court of Canada on joint submissions "that obviously she hasn't read, or been educated on."

The complainant advised that he had successfully appealed Her Worship's decision. He indicated that the sentence put forward in the joint submission on the original date was ordered by the appeal judge as final. He commented that the appeal judge stated that Her Worship's "actions were totally inappropriate, and she had no business ignoring the Supreme Court of Canada regarding joint submissions". He also commented that the appeal judge said that Her Worship was wrong to refer to a prior case in which there was an acquittal.

The complaints committee reviewed the letter of complaint and ordered and reviewed the transcript and audio recording of the proceeding, as well as the transcript of the appeal.

The committee observed that the transcript did not support the allegation that the appeal judge said that Her Worship's "actions were totally inappropriate, and she had no business ignoring the Supreme Court of Canada regarding joint submissions". Rather, the appeal judge said that Her Worship's reason for "jumping" the joint submission was inappropriate and contrary to the law prescribed by the Supreme Court of Canada.

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The committee noted that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state:

- 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

*Commentaries:*

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

The committee noted that to preserve public confidence in the judiciary and in the administration of justice, it is important not only that a justice of the peace be impartial; he or she must also be perceived as impartial. The committee noted that justice should not only be done; it should be seen to be done.

The committee noted that a justice of the peace has a responsibility to ensure that the proceeding is fair for a person who does not have legal representation. The duty to provide assistance to an unrepresented defendant throughout the proceedings is a continuous one. As the proceedings unfold, if legal issues (such as a perception of a conflict of interest or potential perception of a bias) arise, such matters should be properly explained so that the unrepresented defendant is made aware of his/her right to address the Court, and to make submissions and/or indicate a position.

The committee invited Her Worship to respond to the complaint. The committee provided Her Worship with the letter of complaint, the transcript of the guilty plea and sentencing, as well as the decision of the appeal judge. Her Worship provided a response and it was considered by the committee.

The committee noted that the allegations in the complaint letter were intricately connected to the exercise of judicial discretion. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace.

Mindful of the need to respect the right of constitutionally-protected judicial independence, the committee carefully considered whether Her Worship's decision to hear the case was a matter within the jurisdiction of the Review Council. The committee noted that a decision of whether or not to recuse oneself from a case is a discretionary judicial

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decision. The complaints committee observed that it is not uncommon in some locations for a judicial officer to have the same person appear before them on more than one occasion on charges of a similar nature and that does not, in and of itself, give rise to bias or partiality on the part of the justice of the peace, nor an obligation on his or her part to raise the issue of partiality, or recuse himself or herself. The committee concluded that Her Worship's decision to preside over this case was a matter of judicial decision-making outside of the Review Council's jurisdiction.

The complaints committee noted from the decision of the appeal judge that Her Worship did not correctly apply the law on joint submissions. The complaints committee concluded that that Her Worship's decisions and application of the law were outside the jurisdiction of the Council and there was no judicial misconduct.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations are handled and individuals are treated in the future. The committee could see from Her Worship's response that she had considered the appeal judge's comments, reflected upon how she had handled the matter, and that she recognized the ways in which she did not apply the law correctly. The committee observed that Her Worship understood that in the future, she should ensure, where a person is self-represented, that the person understands that the justice of the peace is not bound by joint submissions and can impose a different penalty.

The complaint was dismissed and the file was closed.

### **CASE NO. 28-015/17**

The complainant, an administrative judge, filed a complaint arising from the conduct of the subject justice of the peace presiding over a "case management" or "remand" list. The complainant indicated that the court proceedings included out of custody matters and video remands of in-custody matters. The complainant alleged that:

- ◆ The justice of the peace made several comments during the day about the length of the list and indicating that court would end at 4:30 p.m.;
- ◆ The morning recess was 37 minutes long and Her Worship took the lunch recess from 12:30 p.m. until 2:05 p.m.;

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- ◆ The justice of the peace would not permit the Crown Attorney to call the cases. Her Worship decided that unrepresented cases would be called in the morning and would not permit the Crown Attorney to start with video matters in the afternoon;
- ◆ When the Crown Attorney said, before the lunch recess, “Wait, Your Worship, before Your Worship exits, I...”, the justice of the peace responded, “I’ll speak with you outside.” The Crown Attorney then said, “We have an hour-and-a-half we could be dealing with matters. We could have broken at one o’clock instead.”
- ◆ Her Worship stated that court would stop at 4:30. When the Crown Attorney said, “– we have the list to deal with and I think we need to stay until it’s completed.” Her Worship said, “So I won’t be doing that; I’ll be releasing the clerks and reporter at 4:30.”
- ◆ The justice of the peace said, “But there’s only so many hours in the court day and my instructions are very clear; the Chief of the Ontario Court of Justice does not want us to sit passed the time that we’ve allotted. It’s going on all over the Province and those are our directions. So I intend to stick to them.”
- ◆ Her Worship said, “At 4:30, I’m going to stand up and go and so is the support staff.”
- ◆ At 4:36 p.m., the justice of the peace left the courtroom when the list was not completed and when there was still a person in custody who had yet to be dealt with.
- ◆ Her Worship returned to the courtroom about 19 minutes later at 4:55 p.m., dealt only with the in-custody matter and then at about 4:56 p.m., after the Crown Attorney informed her that there were still a number of other matters outstanding from the morning list, said, “Yes, I’ve made a call to the Regional Senior Justice of the Peace, they’re aware that I’m leaving and I guess they’ll deal with it however they wish to. As I understand it, jurisdiction will be lost on the remaining matters. So I’ve left them with that message so they’re aware. I’ve had a personal discussion. Okay. Thank you.” The justice of the peace then left the courtroom at 4:57 p.m.
- ◆ The remaining matters had to be stood down until another justice of the peace arrived at about 5:30 p.m. His Worship dealt with the remaining nine matters, requiring six bench summonses and one bench warrant with discretion to be issued. Court concluded 20 minutes later, at 5:50 p.m.

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The committee reviewed the letter of complaint and enclosures provided by the complainant. The committee ordered and reviewed the transcript and audio recording of the court proceeding. The committee also retained independent counsel to conduct interviews of persons with knowledge of the alleged events, and received and reviewed transcripts of those interviews.

The committee observed that justices of the peace have a duty to maintain high standards of conduct so as to preserve the integrity of the court and public confidence in the judiciary. The committee noted the Preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* which states:

... society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

Justices of the peace are expected to consider the interests of justice and the rights of parties before the court. The *Principles of Judicial Office* state:

- 2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.
- 2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

The committee noted that a justice of the peace has a duty to accord the parties the full right to be heard according to law and to conduct proceedings fairly. To maintain public confidence in the judiciary and in the administration of justice, justice must not only be done, it must be seen to be done.

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The committee observed that one of the Commentaries in the *Principles* states:

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office.

The committee was of the view that a justice of the peace must never allow the length of the list to result in a failure to allow for due process and regard for the proper administration of justice in accordance with the law. Defendants, lawyers and Crown Attorneys have a right to expect that a justice of the peace will make an effort to hear the parties, uphold and apply the law and afford litigants the right to be heard. The public, police officers and others in the justice system expect that when criminal charges are laid, the requirements of criminal law and the procedures that are part of the criminal justice process will be respected and applied by a judicial officer.

The committee was concerned that the transcript of the proceedings indicated that Her Worship's actions in the courtroom demonstrated a dismissive attitude towards the scheduled cases, towards the Crown Attorney and her role, towards the criminal justice process, and towards the justice system. Such conduct by a justice of the peace may have been perceived by persons in the courtroom as a lack of judicial respect for the rights of defendants, the importance of criminal charges, the process of administering justice, the Crown Attorney and the matters on the docket. The perceptions of those in the courtroom of the dignity of the judiciary and their confidence in the judiciary and in the administration of justice may have been impacted.

The committee observed that the transcript of the court proceedings suggested that throughout the day, Her Worship was prioritizing her personal reasons for departure at 4:30 p.m. over critical aspects of the criminal justice process. The committee observed that the transcripts of the court proceedings and witness interviews indicated that another justice of the peace had to travel to the court location where Her Worship was presiding in order to complete the matters and prevent jurisdiction from being lost. Court staff and the Crown Attorney had to remain until 5:50 p.m. to complete the remaining cases and retain jurisdiction over them.

The committee noted that if a justice of the peace fails to address a case that is scheduled for a court, jurisdiction is lost over the person charged with an offence. If a person is in custody, the person would be released. When Her Worship left the courtroom the first time, there was a person in custody.

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The committee also observed that the transcript of the court proceeding showed that Her Worship was not prepared to permit the Crown Attorney to determine the order in which cases should be called, to call cases where the defendants were represented by counsel, or to make submissions prior to the lunch recess.

The committee considered whether the information before it could be found to show that the justice of the peace failed to carry out and abandoned her judicial duties, and demonstrated a disregard for the proper administration of justice in accordance with the law.

The committee invited the justice of the peace to respond to the complaint and reviewed Her Worship's response.

The committee observed that, in her response, the justice of the peace recognized that her conduct had resulted in another justice of the peace having to attend the courthouse to complete the outstanding matters, and caused the Crown Attorney and court staff to stay until 5:50 p.m. The committee noted Her Worship's explanation that she ended court early not only because she had a medical appointment at 5:00 p.m., but also because she wanted to be respectful of court staff's time. In her response, Her Worship referred to a memo that she said had been circulated by (or on behalf of) the former Regional Senior Justice, indicating that courts should not run past 4:30 p.m., on account of "union issues with support staff as well as their family and daycare obligations".

In light of this additional information, the committee instructed its independent counsel to conduct further interviews and to obtain a copy of the memo to which Her Worship referred. The committee's investigation did not provide conclusive evidence of the memo referred to by Her Worship, and the committee invited a further response from Her Worship.

The committee observed that in her further response, the justice of the peace accepted that she chose the wrong approach on the day in question.

After reviewing Her Worship's responses, the committee remained concerned that Her Worship did not fully appreciate the cumulative impact of her conduct in the courtroom and of her departure from the courtroom when the list was not completed.

The committee noted that the investigation showed that the judiciary are made aware that although court hours are generally 9:00 a.m. until 4:30 p.m., the exigencies of caseloads and of individual cases may well result in courts beginning before 9:00 a.m. and ending



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after 4:30 p.m. Further, the committee observed from the witness interviews that justices of the peace often preside over courts that go well past 4:30 p.m.

The committee was concerned that Her Worship's actions and comments in court may have been perceived by those in the courtroom as a justice of the peace focusing on ending court by 4:30 p.m., and prioritizing her personal affairs, rather than focusing on the administration of justice. The perceptions of those in the courtroom and their confidence in the judiciary and in the administration of justice may have been impacted.

The complaints process through the Justices of the Peace Review Council is remedial in nature, and through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. After carefully considering the justice of the peace's responses, the committee was concerned that, although the justice of the peace acknowledged that she should have handled the day differently, she did not appear to fully appreciate how her conduct affected the perceptions of other judicial participants or the potential impact on public confidence in the judiciary.

The committee decided that the appropriate disposition was a referral of the complaint to the Chief Justice pursuant to section 11(15)(d) of the *Justices of the Peace Act*. In accordance with the Procedures of the Review Council, a complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint.

After the Chief Justice met with Her Worship, the Chief Justice provided a report to the complaints committee. The committee noted that Her Honour discussed with Her Worship the high standards of conduct expected of justices of the peace, and reviewed with her that a referral to the Chief Justice is a serious disposition for a complaint, and that the only more serious step is an order for a hearing. The committee also observed that the Chief Justice discussed with Her Worship the impacts on confidence in the judiciary when a justice of the peace appears to be rushing through the list, leaves the courtroom without completing the list, and puts her own personal priorities over those matters before her.

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The committee noted that the Chief Justice discussed with Her Worship different approaches to better manage any similar situation in the future. The committee observed that Her Worship acknowledged that if she had a problem with a list due to a personal matter, she should speak in advance with the Local Administrative Judge or the Regional Senior Justice of the Peace to work it out in a way that will not impact on court matters. The committee observed that Her Worship understood that she made an error in judgment, regretted how she had handled matters on the date in question, and undertook not to repeat such conduct in the future.

The committee was satisfied that the justice of the peace appeared to better appreciate how her conduct fell below the high standard of conduct expected of a justice of the peace, and how such conduct can impact negatively on the reputation of a justice of the peace. After reading the report, the committee concluded that the justice of the peace had learned a lesson through the complaints process.

The disposition was carried out and the committee closed the file.

#### **CASE NO. 28-020/17**

The Review Council received a letter from a Regional Senior Justice (RSJ) expressing concerns about a justice of the peace's conduct towards legal representatives during court proceedings on a particular date.

The complaint letter indicated that comments by His Worship had been brought to the attention of the Regional Senior Justice who then undertook a review of the audio recording of the proceedings. In the letter, the Regional Senior Justice said that the docket on that date was a "very heavy court". The complainant raised concerns about the tone of the justice of the peace and about the language used by him in court. The complainant questioned whether the comments made by His Worship may be perceived as demeaning and condescending, particularly in relation to paralegals and agents. Illustrative examples and references of the proceedings were set out in the letter.

The complainant also raised a concern that it appeared that there were occasions where His Worship challenged the Federal Crown in relation to charges before the court.

The committee reviewed the letter from the complainant. The committee requested and

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reviewed the complete transcript and audio recording of all of the proceedings before His Worship on the date in question. One member of the committee listened to the entire audio recording and reported to the other members of the committee.

After reviewing the transcript and considering the audio recording, the committee observed that there were many instances where His Worship was polite and judicious in presiding over a heavy list, holding parties accountable for the process and ensuring that every appearance was reasonable.

However, the committee observed that there were also occasions when His Worship appeared to be irritated, frustrated or impatient. The committee noted the remarks of the Supreme Court of Canada in *Re: Therrien*, 2001 SCC 35 where the Court stated:

110. ... the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

(Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

111. The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the

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appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.

The committee was of the view that because of the role they play, justices of the peace must foster respect for the justice system and for the judiciary as a whole. Because they hold positions of considerable authority, justices of the peace are expected to conduct themselves according to high standards of professional conduct.

The committee noted that the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

Section 1.3 of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state:

1.3 Justices of the peace will endeavour to maintain order and decorum in court.

*Commentaries:*

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

The committee appreciated the demands upon a justice of the peace who is required to preside over a lengthy list; however, the committee noted that regardless of how busy a court is, there is an obligation on every justice of the peace to maintain an appropriate demeanour with those appearing before him or her whether those persons are self-represented, students, paralegals or lawyers. It is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed by those appearing before him or her. A justice of the peace should use a patient, courteous and neutral tone. Comments should be made with an appropriate level of courtesy, respect and civility.

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The committee noted that various legal representatives frequently appear before His Worship, including students and paralegals. The committee observed that the transcript suggested that His Worship appeared to be frustrated, irritated and impatient with students and paralegals and less inclined to accord them the same level of respect and patience that was shown to lawyers.

With respect to the complainant's allegation that there were occasions where His Worship challenged the Federal Crown in relation to charges before the court, the committee observed that the transcript indicated that His Worship appeared to become argumentative with the Crown Attorney when the Crown Attorney sought to proceed with charges that had been laid by the police and were before the court in accordance with the law.

The committee noted that a justice of the peace is expected to uphold the role of a neutral, objective adjudicator on cases that come before him or her. A justice of the peace is expected to apply the applicable law and to refrain from expressing opinions on political issues. He or she must be able to set aside his or her personal views while presiding over cases in the courtroom. A justice of the peace is expected to refrain from interfering with the decision of a Crown Attorney to proceed with criminal charges in the courtroom. The appearance of impartiality is important to maintain public confidence in the administration of justice.

The committee invited His Worship to respond to the complaint and reviewed and considered his response.

After reviewing his response, the committee observed that His Worship's had carefully reviewed the court record and the concerns raised about his conduct and comments. The committee observed that His Worship extended a sincere apology for his conduct and he held himself personally accountable.

His Worship shared information with the committee about his personal circumstances that he said may have contributed to his conduct on the particular day. The committee observed that His Worship had taken significant steps to address those personal matters.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. The committee observed that the response from His

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Worship showed that he had reflected upon his conduct and that he better appreciated how his comments were not appropriate. The committee concluded that no further steps were necessary and the file was closed.

### **CASE NO. 28-021/17**

The complainant, an administrative justice of the peace, filed a complaint in relation to the conduct of the subject justice of the peace. The complainant alleged that the justice of the peace used the title “Justice” to describe herself in her written communications, and in the message left on her courthouse voicemail. Her Worship also allegedly used this title in her email communications.

The complainant alleged that the justice of the peace continued to use the term “Justice” in referring to herself and to hold herself out as “Justice” in her dealings with others despite having been informed that it was the position of the Chief Justice, the Associate Chief Justice, the Regional Senior Justice and the Senior Advisory Justice of the Peace that the use of the term “Justice” was inappropriate for a justice of the peace and that Her Worship should discontinue using this form of address.

The complainant also said that the Regional Senior Justice had heard complaints from judges of the Superior Court of Justice and from Court Services Division that they have been confused and misled by justices of the peace who on occasion used the title “Justice”. Despite such concerns, the complainant alleged that Her Worship refused to discontinue using this title. Instead, Her Worship suggested that the matter be referred to the Justices of the Peace Review Council.

The complaints committee reviewed the letter of complaint and the enclosures provided by the complainant, including emails sent by the subject justice of the peace.

The committee observed that Her Worship appeared to hold a different opinion from the Chief Justice and other senior members of the judiciary on whether or not a justice of the peace was entitled to use the title “Justice”. The committee noted that Her Worship took the view that the title was not inappropriate, given the wording of section 2 of the *Criminal Code* that says, “In this Act, “justice” means a justice of the peace or a provincial court judge...”.

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While noting that there may be different perspectives on the law, the focus of the complaints committee was on the allegations of conduct raised in the letter of complaint and on upholding public confidence in, and the integrity of, the judiciary and the Ontario Court of Justice.

The committee noted that the preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* includes the following:

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The *Principles* also state:

2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

The committee agreed with the view of the Supreme Court of Canada that a judicial officer must strive to preserve “the public’s invaluable confidence in its justice system”. (*Therrien (Re)* [2001] 2 SCR 3 at para. 147)

The committee noted that a title used by a judicial officer can convey both to the public and to other judicial colleagues that the person who uses that title holds a particular judicial office. The title “Justice” may be understood by members of the public and by persons in the court system as suggesting that the person who uses that title holds the office of a judge and is legally authorized to carry out the particular responsibilities of that office.

The committee observed that materials provided by the complainant indicated that the Regional Senior Justice in the region in which Her Worship presided had received complaints from judges of the Superior Court of Justice and from Court Services Division indicating that they have been confused and misled by justices of the peace who on occasion used the term “Justice”.

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The committee noted the importance of upholding the integrity of the judiciary and the justice system. The committee observed that the Chief Justice, in her leadership role for the Court, formulated a position that justices of the peace should not use the title “Justice”.

The committee recognized that the position taken by the Chief Justice would uphold the integrity of the judiciary and the justice system by addressing the confusion, misunderstanding and a perception by some, as was brought to the attention of the Regional Senior Justice, that they have been misled when a justice of the peace uses the title “Justice”.

The committee observed from its investigation that Her Worship had been informed by the Regional Senior Justice in her region that the use of the title “Justice” was improper and confusing. Her Worship was asked to instead use the terms “Her/Your Worship” or “Justice of the Peace”. The committee noted that it appeared that Her Worship was made aware that the Chief Justice had confirmed that the title “Justice” should be used in judges’ titles only, and that the Associate Chief Justice and the Regional Senior Justice had communicated that position to the Bench and to Her Worship on behalf of the Chief Justice.

The committee was concerned that a member of the public may perceive the conduct of Her Worship as a wilful refusal to follow a direction determined by the Chief Justice to be in the best interest of the Court, and as disrespectful toward the Chief Justice. The committee also observed that a member of the public may perceive the conduct of Her Worship to constitute wilful defiance of judicial officers who, by reason of their offices, hold leadership roles for the Ontario Court of Justice that play an important role in upholding public confidence in and respect for the judiciary and the Court.

The committee also considered whether a member of the public may perceive the conduct of Her Worship to be an attempt to increase her personal status or the status of her office at the expense of a loss of respect for the judiciary and the Court.

The committee invited the justice of the peace to respond to the complaint and reviewed Her Worship’s response.

The complaints process through the Justices of the Peace Review Council is remedial in nature, and through the review of and reflection upon one’s conduct, improvements are made as to how situations and individuals are treated and handled in the future.



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After carefully considering the justice of the peace’s response, the committee remained concerned that Her Worship did not appear to appreciate that her conduct may be perceived by members of the public as disrespectful, or how such conduct may reflect upon the integrity of the judiciary.

The committee decided that the appropriate disposition was a referral of the complaint to the Chief Justice pursuant to section 11(15)(d) of the *Justices of the Peace Act*. In accordance with the Procedures of the Review Council, a complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint.

After the Chief Justice met with Her Worship, the Chief Justice provided a report to the complaints committee. The committee observed that the Chief Justice discussed with Her Worship the high standards of conduct expected of justices of the peace, as well as the concerns raised by the committee in respect of the complaint.

The committee noted that the Chief Justice also discussed with Her Worship the perceptions that can arise when a justice of the peace is informed by an Associate Chief Justice that the Chief Justice has directed justices of the peace not to use the title “Justice”, and a justice of the peace continues to defy that direction. The committee concluded that after the meeting with the Chief Justice, it was clear to Her Worship that she was expected to stop using the title “Justice”. The committee observed that Her Worship undertook to the Chief Justice that as of the date of her meeting with the Chief Justice, Her Worship would no longer use the title “Justice”.

The disposition was carried out and the committee closed the file.

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### **CASE NO. 28-024/17**

The complainant appeared before the subject justice of the peace for a pre-enquête to determine whether criminal charges should be laid against a person known to the complainant. His Worship did not issue process in the matter.

In her letter of complaint, the complainant requested a full retraction of His Worship's comments, a public apology, disciplinary action and prevention of similar actions toward others.

The complainant alleged that His Worship was prejudiced against her based upon the outcome in a separate proceeding that involved a criminal charge against her. She also alleged that during the proceeding, His Worship interrupted her, expressed assumptions about her emotions, speculated about charges from the previous criminal process, was discriminatory and sarcastic, made stereotypical comments, mocked her and refused to allow her the opportunity to provide explanations. She further alleged that His Worship didn't present a name and title in front of him. She stated that it was unacceptable for a justice of the peace to confuse citizens about 'who is who' in the courtroom and how to address them.

The complainant commented that she encountered "persistent and systemic human rights discrimination, assault, battery, harassment, and bullying, from all involved in my case, but especially during prosecution". She expressed her view that she was stonewalled by His Worship's inhumane manners and misconduct. She questioned whether His Worship became "incapacitated or disabled from the decision execution of the judiciary?"

The complaints committee reviewed the letter from the complainant and all of the materials that she provided. The committee ordered and reviewed the transcript of the proceeding.

The committee observed that the transcript provided no evidence to support the allegations that His Worship discriminated, harassed and bullied the complainant during the proceeding.

The committee observed that the transcript showed that His Worship attempted to ensure that the complainant was comfortable throughout the proceeding, given her language barrier. The committee found that the transcript demonstrated that His Worship assisted the complainant quite well.

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The committee noted that the complainant disagreed with how His Worship assessed the evidence and his decision to not issue process. The committee observed that decisions made by a justice of the peace are matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council, not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no support for the allegations of misconduct and the allegations related to decision-making were outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

### **CASE NO. 28-026/17**

The complainant, who identified himself as a person with disabilities, provided materials about his mental and physical illnesses and copies of his complaints about the police and others to other bodies. He stated in his letter that he was the victim of gang stalking, neural remote monitoring and terrorism to see him as "...insane, to have [him] committed or arrested, to murder [him]."

He alleged that he was informed by the justice of the peace that his applications to lay private Informations and peace bonds imposed on various police officers and members of provincial parliament were outrageous. He further alleged that he was yelled at and ordered to vacate the office of the justice of the peace.

He requested that the Council take action to ensure that his forms are processed.

The complaints committee reviewed the letter of complaint. The complaints committee noted that Court staff could not locate any appearance by the complainant before the justice of the peace in relation to the proceeding referred to in his complaint.

The committee noted that the staff of the Council had written to the complainant requesting that the complainant confirm the date, time and location in which he appeared before the justice of the peace. The complainant responded in a letter, stating his phone, internet and money are being blocked by the members of the organizations who were murdering

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and robbing him. He stated that he had complaints about every judge he had seen in relation to the above noted alleged crime which he said were committed against him.

The committee concluded that the complaint be dismissed on the basis that the court records did not support the allegations made by the complainant.

As well, the committee also concluded that the complainant's request that the Council assist him in having his forms processed to initiate criminal process was not a matter within the jurisdiction of the Council. For the reasons noted, the file was closed.

### **CASE NO. 28-028/17**

The complainant, a self-represented defendant, wrote a letter to the Review Council after appearing before a justice of the peace for trial. He was charged with an offence under the *Highway Traffic Act*. He indicated that he informed the prosecutor that he and his father would be recording the proceedings for the "...sole purpose of supplementing our notes in accordance with the Practice Direction provided by former Chief Justice of Ontario, W.G.C. Howland...."

He indicated that the prosecutor said that a motion was required to record the proceedings. The justice of the peace agreed and refused his offer to read the Practice Direction contained in the *Ontario Courts of Justice Act*, stating that she was knowledgeable of the *Act*. He alleged that several police officers surrounded them and demanded that they shut the recording device off or the police would take it. Accordingly, the complainant complied with the request by the police.

The complainant said that while he was cross-examining the police officer, the prosecutor told the justice of the peace that the question being asked by the complainant was irrelevant. He alleged that the justice of the peace agreed and would not allow the complainant to continue further with his cross-examination.

Further, the complainant alleged that when he was on the stand giving his own testimony, the prosecutor and the justice of the peace conspired to limit his testimony. He said that this interfered with him presenting his evidence.

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He alleged that the justice of the peace and the prosecutor were in a position of trust as agents of Her Majesty the Queen and interfered in the presentation of his defence under oath or affirmation. He asserted that this was a breach of trust, bringing the administration of justice into disrepute.

The complaints committee reviewed the letter from the complainant and ordered and reviewed the transcript of the proceeding. The committee also ordered the audio recording of the proceeding.

The committee observed that the transcript showed that the prosecutor submitted that the complainant was supposed to bring a prior motion if he sought to record the proceedings. The justice of the peace expressed her view on the law and decided that she would not allow recording without a motion brought before the court. The committee noted that judicial decision-making is outside the jurisdiction of the Council.

The committee observed that the transcript showed that Her Worship was polite and helpful to the complainant. Her Worship took the time to explain the process and procedure for the complainant. She clarified several matters of procedure for the complainant. The transcripts showed that Her Worship assisted him during his cross-examination of a witness and during his own testimony. Her Worship was fair, courteous, helpful and patient.

The committee noted that the complainant disagreed with how Her Worship assessed the evidence, determined relevance of questions and decided the case. The committee observed that decisions made by a justice of the peace are matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council, not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no support for the allegations of misconduct and the allegations related to decision-making were outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

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### CASE NO. 28-029/17

The Council received a letter of complaint from a defendant who appeared before the justice of the peace in Provincial Offences Court. The justice of the peace found the complainant guilty of an offence under the *Highway Traffic Act*.

In her letter of complaint, the complainant indicated that she attended court with her mother, daughter and cousin, intending to prove her innocence. The complainant stated that she and her daughter proceeded into the courtroom and observed the presiding justice of the peace instructing those present in the courtroom to refrain from talking while court was in session. The complainant noted that while she was in court with her daughter, her cousin and her mother had to use the restrooms, and were not present to hear the justice of the peace's instructions to refrain from speaking while court was in session.

The complainant alleged that when her cousin and mother entered the courtroom, they spoke to each other. She indicated that the justice of the peace threatened to kick them out if they spoke again. The complainant alleged that she observed police officers, "primarily males", sitting nearby and talking in the courtroom. She stated that the justice of the peace did not reprimand the officers even though they were in the courtroom when she issued the warning about talking in court.

The complainant expressed her view that judges and police officers work on different levels of the same system, and that "in-group favouritism exists". She also asserted that "the system" is more interested in collecting money and exercising power for the sake of feeling powerful, rather than in protecting people by exercising justice.

The complainant alleged that when her matter was called, she attempted to explain her side of the story to the justice of the peace, and why she and the police officer may have seen and perceived things differently. She stated that the justice of the peace did not allow her to express herself, and told her not to philosophize.

She alleged that Her Worship had no regard or interest in what she had to say, and that everything she and her witness said was dismissed. The complainant also questioned the "detailed account" of the evidence given by the police officer, and complained that the justice of the peace did not question anything the police officer said or did. She stated that the justice of the peace took every word the police officer said as true, important and

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vital, and took every word from the complainant and her witness as a lie and irrelevant, thereby "...stripping [her] and [her] witness of all morality, decency, credibility, intelligence and thus [their] humanity."

The complainant alleged that the justice of the peace treated her unfairly and was prejudiced against her because she chose not to put her hand on the Bible and had tattoos on her arms. In contrast, the police officer was dressed in "her best church clothes". She alleged that Her Worship lacked the ability to reason critically and exercised prejudice instead of justice, making her feel "totally violated". The complainant stated that she felt the justice of the peace treated her as if she were "...stupid, a liar, sensually impaired, disabled and a criminal".

She stated that after finding her guilty, the justice of the peace asked the complainant if two weeks was long enough for her to pay the ticket. Even though the complainant indicated that this amount of time was not long enough, she still got a notice in the mail for payment within the two week timeframe. She stated that this confirmed that Her Worship did not listen to her. The complainant questioned whether she should direct her complaint to the Human Rights Commission.

She concluded by making various allegations against the police, asserting that they have special privilege, "get away with just about everything", and were terrorizing her instead of protecting her. She expressed the view that the system had violated her.

A letter was sent by Council staff to the complainant to clarify that the Council has no authority to intervene in reviewing or changing decisions made by a justice of the peace. The complainant was also informed that any complaints about the police could be pursued through the Office of the Independent Police Review Director. The letter also explained that the Council cannot provide advice as to whether she should direct a complaint to the Human Rights Commission.

The complaints committee reviewed the letter from the complainant and ordered and reviewed the transcript of the proceeding. The committee also listened to excerpts of the audio of the proceeding, as well as the commencement of the full morning tier of the proceeding.

The complaints committee noted that Her Worship's assessment of the evidence and her decisions, including finding the complainant guilty and deciding on the time to pay the fine,

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were matters of judicial decision-making outside the jurisdiction of the Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

With respect to the allegation that the justice of the peace warned her mother and cousin that if they spoke again, they would be removed from the courtroom, the committee observed that the transcript of the court proceedings showed that it appeared that someone was speaking during the proceedings and the clerk said, "There's no talking in the body of the court." The transcript also indicated that later in the proceedings, Her Worship stated to someone in the body of the court, perhaps the complainant's relatives, "Okay, so no talking in the body of the court, okay? You guys have been speaking through the entire session this morning. I'm going to ask you to be quiet. If you want to speak, you're more than welcome to go into the hallway and do that, okay?" The committee observed that it appeared that the persons to whom the comments were made by Her Worship were perceived by her to have been engaged in conversation throughout the proceedings. The committee noted that a justice of the peace has a responsibility to maintain order in the courtroom. If persons were continuing to speak in the body of the courtroom while court was in session, it would not be misconduct for the justice of the peace to ask them to be quiet or to go to the hallway to talk.

With respect to the allegation that when the complainant's matter was called, she was not permitted to express herself and the justice of the peace told her not to philosophize, the committee found no evidence to support that allegation. The committee observed that the transcript indicated that after the matter was called, the justice of the peace told the complainant that she did not want to hear anything about the situation because she would hear it in the trial. Her Worship explained the trial process and that she would need to hear the evidence under oath and then after that, she would make a decision. The transcript indicated that when the officer was giving evidence, Her Worship asked the complainant whether she had objections to the officer using her notes and the following dialogue occurred:



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- The Court: Do you have any objections to the officer using her notes?
- The Defendant: Well, I've been just studying the application on psychology and in particular, memory...
- The Court: Okay. So, we're not having that discussion. I'm asking you about the officer's notes. Do you have trouble with – anything the officer said? Do you think she's lying about that she wrote the notes on that day? Is she lying that she's going to use them to refresh her memory?
- The Defendant: I don't think she's lying. I think memory is and can be unreliable.
- The Court: Yes, but do you have any problems with the officer's notes?
- The Defendant: No.

The committee observed that Her Worship's decision that there would not be a discussion of the complainant's academic studies of psychology and memory was a decision made in the context of Her Worship's determination of relevance to the issue of whether the officer could use her notes to refresh her memory. The committee noted that judicial decision-making is a matter outside of the jurisdiction of the Council.

The committee found that the court record did not support the allegations that Her Worship had no regard for or interest in what the complainant had to say, that Her Worship was biased or prejudiced against the complainant because she chose to give evidence by affirmation or because of her appearance or attire, or that Her Worship favoured police officers. The committee observed from the transcript of Her Worship's Reasons for Judgment that Her Worship considered the defence and evidence put forward by the complainant, including the complainant's evidence that she was paying attention to the GPS while driving. Her Worship also referred to particulars of the evidence given by the officer about the events that led to the charge against the complainant.

The committee observed that the court record indicated that Her Worship was patient, courteous and helpful throughout the proceedings. The committee also noted that after the complainant asked if she could appeal the decision, Her Worship took steps to have the complainant provided with information on how she could appeal the decision.

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With respect to the allegation that the complainant told Her Worship that two weeks was not long enough to pay the fine and that she received a notice for payment in the mail within that timeframe, the committee observed that Her Worship asked the complainant whether she needed more than 15 days to pay the fine and the complainant said, “I can pay. I have the money.” Her Worship said she would give the complainant 15 days to pay. The committee noted that a justice of the peace is not involved in the process of sending a notice after a trial to a defendant about payment of a fine. That would be a matter handled by court staff.

After completing its investigation, the complaints committee concluded that there was no support for the allegations of judicial misconduct, and the allegations related to decision-making were outside the Council’s jurisdiction. The committee dismissed the complaint and closed the file.

### **CASE NO. 28-030/17**

The complainant, a lawyer, submitted a complaint on behalf of a legal organization arising from a court appearance in which an applicant was seeking a peace bond under s. 810 of the *Criminal Code*. The complaint letter indicated that a paralegal appeared in court as agent for the defendant’s lawyer. The allegations included the following:

- ◆ The justice of the peace denigrated the absent lawyer and made disparaging remarks about his ethics and integrity;
- ◆ The justice of the peace attacked the lawyer’s competence, in his absence, by suggesting that neither he nor the paralegal knew anything about s. 810 of the *Criminal Code*;
- ◆ The justice of the peace inappropriately threatened to issue a bench warrant against the defendant in circumstances where a legal representative was appearing on her behalf;
- ◆ The justice of the peace stated that judges have no jurisdiction to deal with s. 810 hearings and responded in a threatening manner towards the paralegal when she made a request to go before a judge if Her Worship was inclined to issue a bench warrant;

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- ◆ The justice of the peace made unreasonable demands to know exactly where the lawyer was on given days, rather than accepting that as an officer of the court he was simply unavailable on certain days; and,
- ◆ The justice of the peace made comments that indicated she had inappropriately prejudged the case and appeared to find that the defendant evaded service without hearing any evidence under oath about attempts to evade service or about the allegations against the defendant.

The complainant organization perceived the justice of the peace's conduct to be antithetical to the role of an independent, objective and neutral arbiter. It was the perception of the complainant that Her Worship's conduct demonstrated disrespect to the paralegal, the lawyer, and also the administration of justice as a whole.

The committee reviewed the complaint and enclosures provided by the complainant. The committee ordered and reviewed the transcript and audio recording of the proceeding.

The committee observed that the transcript confirmed that the proceeding before Her Worship was a first appearance and the Crown Attorney said that on the first appearance there are often discussions about how to resolve a matter without a hearing. The committee noted that it is not uncommon for lawyers to accept retainers despite not being available to personally attend the first appearance. The committee noted that in the present case, disclosure had neither been provided nor reviewed with the client. The lawyer sent an agent to seek an adjournment for these purposes.

The committee observed that the transcript showed that the justice of the peace made comments about the lawyer including:

- ◆ "They're throwing out somebody's hard-earned money for no reason whatsoever. It is disrespectful to the court. It is disrespectful to the complainant. It is disrespectful to my staff, to the Crown Attorney, and, quite frankly, it is manifestly unfair. There isn't – people have an ethical obligation, lawyers have an ethical obligation, to attend court and you don't take on a file when you know you are not available to attend."
- ◆ "Instead, he agreed to take money from somebody well knowing he was not available to attend and then he sends you without any instructions and without this lady coming to court either."

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- ◆ “Then he should have cleared his calendar for this matter. If he had any respect for his client he would’ve ensured that he was here today. Instead he says, essentially, I have no respect for the complainant. I have no respect for any of the officers of the court. I have no respect for my client, except I do like my client paying me money, and I have absolutely no respect for the justice of the peace, and by implication, for the judicial system. I think that this is, quite frankly, something that is despicable.”

The committee invited Her Worship to respond to the complaint and reviewed Her Worship’s response.

The committee was concerned about the way Her Worship treated the paralegal and spoke about the absent lawyer. The committee could understand why the complainant perceived Her Worship, at certain points, to be threatening the paralegal, denigrating the paralegal and the lawyer, and/or engaging in bullying tactics against the paralegal. After reviewing the transcript, the committee could understand why the complainant perceived that Her Worship favoured the person seeking the peace bond and was expressing views on the circumstances before evidence was heard.

The complaints committee noted that all persons in the courtroom are observers of the comments and the behaviour of a justice of the peace. Each and every comment made by a justice of the peace, and his or her tone and manner in the courtroom are all important elements of how a justice of the peace is perceived by members of the public. A justice of the peace has a unique role as exemplar and guardian of dignity in the court.

The committee noted the preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that has been approved by the Review Council, which in part states:

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

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The committee observed that the role of a justice of the peace is that of a neutral adjudicator. The Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice include the following:

- 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

*Commentaries:*

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

The committee noted that public confidence in the administration of justice requires that a justice of the peace be, and be seen to be, impartial.

The committee noted that in the leading case on judicial conduct, *Therrien v. Minister of Justice et al*, the Supreme Court of Canada provided a general description of the conduct expected of a judicial officer and the importance of being seen to be impartial and objective:

[111] The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens ...

*Therrien v. Minister of Justice et al.*, [2001] 2S.C.R.3 at para. 111

The committee observed that one of the Commentaries contained in the *Principles of Judicial Office* states:

“Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.”

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The committee noted the case of *Chippewas of Mnjikaning First Nation v. Chiefs of Ontario*, 2010 ONCA 47 in which the Ontario Court of Appeal makes it clear that in the justice system, there are expectations of civility on the part of the judiciary starting at paragraph 235:

[235] In its 2009 publication, “Principles of Civility for Advocates”, available online at «<http://www.advocates.ca>», the Advocates’ Society includes a section entitled, “What Advocates are Entitled to Expect of the Judiciary”. Under that heading, principle 73 reads: “Advocates are entitled to expect judges to maintain firm control of court proceedings and ensure that they are conducted in an orderly, efficient and civil manner by counsel and others engaged in the process.”

[236] We agree with that principle. We would add that the parties and the public are also entitled to have these same expectations of trial judges.

.....

[240] When trial judges do intervene, it is important that they do so in a judicious manner. They should avoid expressions of annoyance, impatience and sarcasm. Judges should provide leadership by example in promoting civil behaviour by those involved in the court processes. Judges cannot expect lawyers to behave civilly if they do not themselves.

[241] In the “Principles of Civility” referred to above, the Advocates’ Society set out the two further principles that are worth repeating:

71. Advocates are entitled to expect judges to treat everyone before the courts with appropriate courtesy.

74. Advocates are entitled to expect that judges will not engage in unjustified reprimands of counsel, insulting or improper remarks about litigants and witnesses, statements evidencing prejudgment and intemperate or impatient behaviour.

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[242] Again, we would add that everyone involved in a trial is entitled to these expectations.

The committee was of the view that a justice of the peace must always strive to be patient, dignified and courteous in performing the duties of judicial office. A justice of the peace must have a heightened sense of awareness of how his or her conduct or comments are perceived by others. A justice of the peace has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office.

The complaints process through the Justices of the Peace Review Council is remedial in nature, and through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. After carefully considering Her Worship's response, the committee was concerned that, although Her Worship acknowledged that her language was strong, she did not appear to fully appreciate how her comments and conduct affected the perceptions of other judicial participants or the potential impact on public confidence in the judiciary.

The committee decided that the appropriate disposition was a referral of the complaint to the Chief Justice. In accordance with the Procedures of the Review Council, a complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint.

After meeting with Her Worship, the Chief Justice provided a report to the complaints committee. The committee observed that Her Honour discussed with Her Worship the high standards of conduct expected of justices of the peace, and how every comment made by a justice of the peace, and his or her tone and manner in the courtroom, are all important elements of how a justice of the peace is perceived by members of the public. The Chief Justice discussed with Her Worship the concerns raised by the complaint.

The committee observed that Her Worship expressed deep regret to the Chief Justice for the circumstances that led to the complaint. The committee was satisfied that Her Worship appeared to better appreciate why her conduct and comments could be perceived as bullying, inappropriate and disrespectful. The Chief Justice discussed with Her Worship

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approaches to better manage any similar situation in the future. After reading the report, the committee concluded that Her Worship had learned a lesson through this complaints process. The committee noted that Her Worship said that she will conduct herself in a professional manner and avoid a repeat of the type of conduct that led to the complaint.

The disposition was carried out and the committee closed the file.

### **CASE NO. 28-031/17**

The complainant sent a letter to the Council advising that a justice of the peace released multiple defendants charged with many break and enter offences without any bail conditions. He provided three news articles about the defendants, the allegations and the bail proceedings with his complainant

In his letter to the Council, the complainant indicated that Her Worship said "...these were not heinous crimes and I do not believe the general public will be offended." He alleged that Her Worship's comments became more offensive when she indicated that, "sentencing would be at the lower end of the scale".

The complainant stated that Her Worship brought her own personal bias in favour of releasing criminals, and confidence in the administration of justice was "thrown out the window". He indicated that Her Worship's comments in court were "complete drunkenness". He alleged that the citizens of the community where the alleged offences occurred were outraged by the actions of the accused and by Her Worship's "unprofessional words and actions". He was of the view that Her Worship's comments showed no concern for the victims and put the sentencing judge "on notice" which favours the accused.

The complaints committee reviewed the letter of complaint and the news articles provided by the complainant. The committee ordered and reviewed the full transcript of the court proceedings.

The committee observed that the transcript showed that Her Worship released the defendants on bail with conditions. She did not release them without conditions, as alleged by the complainant.

The committee noted that the news articles contained some inaccurate and incomplete information about the proceeding. The committee also noted that the language used when



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Her Worship stated that the allegations were “not heinous crimes and I do not believe the general public will be offended” is language commonly used by judicial officers when applying the provisions in the *Criminal Code* governing bail hearings.

The committee noted that justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to act on complaints that do not fall within its jurisdiction. Mindful of the need to respect the right of constitutionally-protected judicial independence, the committee considered whether the allegations about Her Worship’s decision to release the defendants and her reasons for doing so were within the Council’s jurisdiction. The committee concluded that the allegations were outside the jurisdiction of the Review. The complaint was dismissed and the file was closed.

#### **CASE NO. 28-033/17**

The complainant wrote a letter of complaint following his appearance before a justice of the peace for a trial on charges under the *Highway Traffic Act*. He said that when he appeared for his matter, he was asked whether he had a lawyer. He believed that this meant that by proceeding without a lawyer, he had already lost the case.

He alleged that he was told by the police that he should keep quiet and he would lose regardless of what happened. He appeared to believe that the police, a third party and the justice of the peace were working together. He alleged that they all knew each other well, stating, “It is almost like one big happy family, or a Cult!” He further alleged that, “Who ever [sic] orchestrated this kind of Circus, surely the [justice of the peace] was the leader.”

The complainant also alleged that the facts were not addressed during the proceedings and he was “put through a meat grinder”. He alleged that they were lies, and there was no recording of what went on. He believed that the “whole thing was a set-up, already before hand, if I don’t plead [sic] guilty”.

The complainant was found guilty of all charges. He sought a review of his case and an independent justice of the peace who does not take sides and conducts matters fairly.

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In the letter to the complainant acknowledging receipt of his complaint, staff of the Council explained that the Council's jurisdiction is limited to the conduct of justices of the peace. Staff informed the complainant that he could pursue his concerns about the prosecutor by contacting the Manager of Provincial Prosecutions for the court location. The complainant was also advised that the Office of the Independent Police Review Director (OIPRD) is an arm's length agency that accepts complaints about the conduct of police officers.

The complaints committee reviewed the letter from the complainant and the enclosures he provided. The committee also ordered and reviewed the transcript of the proceedings that was prepared based upon the audio recording of the proceedings.

The committee observed that the transcript provided no evidence to support the allegations that His Worship was biased against the complainant or that there was collusion in relation to the complainant's charges. The committee observed that the transcript showed that His Worship was very patient with and helpful toward the complainant, providing every opportunity for the complainant to respond, and regularly assisting him as a self-represented defendant by explaining the procedural elements to him throughout his trial. The committee also found no evidence in the transcript to suggest that the justice of the peace had a personal relationship with either the prosecutor or the police officer.

The committee noted that the complainant disagreed with how His Worship assessed the evidence and his decision to find the complainant guilty of the offences. The committee observed that decisions made by a justice of the peace are matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council, not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no support for the allegations of misconduct and the allegations related to decision-making were outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

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### CASE NO. 28-036/17

The complainant appeared before a justice of the peace and was unsuccessful in his attempt to lay charges under the *Criminal Code* against the Justices of the Peace Review Council, the Ontario Judicial Council and the Ontario Court of Justice and justices of the peace. He then sent a complaint about the justice of the peace to the Review Council. His allegations included:

- ◆ Her Worship lied when she said that she was not bound by a previous order made by a justice of the peace.
- ◆ Her Worship acted without jurisdiction and in bad faith by lying that the *Criminal Code* does not authorize the prosecution of an organization.
- ◆ Her Worship contravened the objects of the *Justice of the Peace Act* by using the hearing to train other justices of the peace on how to commit crimes;
- ◆ Her Worship acted in bad faith by collaterally attacking a previous order made by another justice of the peace.
- ◆ Her Worship violated the objectives of s.16 of the *Victims Bill of Rights* by lying that she lacked jurisdiction to make the order that he wanted;
- ◆ Her Worship lost immunity for acting without jurisdiction to try to change the *Criminal Code* without *mens rea* to defraud *Criminal Code* services;
- ◆ Her Worship was a criminal pretending to be a justice of the peace and lied that if the Ontario Court of Justice was convicted of a crime that would make her guilty of the same crime.

The complainant included his legal arguments in support of his view that the Ontario Court of Justice should be criminally charged.

The complainant also alleged that Her Worship had not released the transcripts of the court proceedings in which he appeared

In another faxed letter, the complainant said he wished to bring an application under the *Statutory Powers and Procedures Act* to have his complaint heard immediately.

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The committee reviewed the correspondence and the materials that the complainant submitted. The committee noted that the complainant appeared to disagree with decisions made by other justices of the peace in relation to remedies that he wanted to try to obtain through the criminal courts. After decisions made by those judicial officers did not give him the remedies he sought, the complainant attempted to have criminal charges laid against the Court, the Ontario Judicial Council and the judicial officers.

The committee concluded that that the complaint should be summarily dismissed on the basis that the allegations related to the justice of the peace's interpretation and application of the law, which are matters outside the jurisdiction of the Council.

The committee noted that the Ministry of the Attorney General oversees the provision of transcripts of court proceedings, not justices of the peace.

The complaint was dismissed on the basis that the allegations related to matters outside the jurisdiction of the Council. The file was closed.

### **CASE NO. 29-001/18**

The complainant submitted a letter of complaint to the Review Council arising from two separate matters involving the same justice of the peace.

In the first allegation against Her Worship, he indicated that he was apprehended on a Form 2 Order under the *Mental Health Act* requiring him to undergo an examination by a physician. He alleged that he was apprehended based upon false information presented by a support worker, which Her Worship accepted without verifying that the information was accurate. The complainant stated that the police attended his residence with a Detention Order signed by the justice of the peace. He also indicated that police refused to show him the Order.

He alleged that the police officers abused, traumatized, and injured him and made racial comments while he was being arrested. He indicated that he was examined by a doctor and was immediately released. He asserted his view that if Her Worship had verified the facts presented, the abuse of police officers would have never occurred.

In acknowledging his letter of complaint, the complainant was informed that allegations about a support worker are outside the mandate of the Review Council.

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With respect to his concerns about the police, the complainant was also informed that the Review Council has no authority to review the conduct of police officers. The complainant was referred to the Office of the Independent Police Review Director (OIPRD).

With respect to the second allegation about the justice of the peace, the complainant indicated that he appeared along with his service dog before the justice of the peace for a pre-enquête to lay a private information against an individual who had harassed and threatened to harm and kill him.

The complainant alleged that upon entering the courtroom, Her Worship attempted to remove him and stated that dogs are not permitted in the courtroom as people may experience allergic reactions to dogs.

The complainant noted that his service dog was non-allergenic and was permitted to accompany him under Federal Law. He alleged that Her Worship stated that she would make an exception, but informed him that his dog would no longer be allowed in the courtroom.

The complaints committee reviewed the letter from the complainant and ordered and reviewed the transcript of the proceeding.

The committee noted that the Ontario Regulation 429/07 of the *Accessibility for Ontarians with Disabilities Act, 2005* (the Customer Service Standard) states:

“An animal is a service animal for a person with a disability,

- a) if it is readily apparent that the animal is used by the person for reasons relating to his or her disability; or
- b) if the person provides a letter from a physician or nurse confirming that the person requires the animal for reasons relating to the disability.”

The committee observed that the transcript provided no evidence to support the allegations that Her Worship attempted to remove the complainant’s service dog from the courtroom. In fact, Her Worship stated that “animals are not typically permitted in the courtroom because members of the public often have allergies to them.” Her Worship asked whether there was a particular reason the complainant needed the animal in the courtroom. After the complainant told Her Worship it was a service dog and how the service dog assisted him, Her Worship permitted the dog to remain in the courtroom.

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With respect to the signing of the Form 2 under the *Mental Health Act*, the committee noted that the complainant disagreed with how Her Worship assessed the information to make the order that required him to undergo an examination by a physician. The committee observed that decisions made by a justice of the peace are matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council, not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no support for the allegations of misconduct and the allegations related to decision-making were outside the Council's jurisdiction. The committee dismissed the complaints and closed the file.

#### **CASE NO. 29-005/18**

The Review Council received a letter of complaint from a self-represented defendant who attended provincial offences court. He wrote to the Council about the conduct of the justice of the peace towards another defendant and about the justice of the peace's conduct in his own court case. He provided a copy of the transcript of the court matter that preceded his own.

At the time he submitted his complaint, the defendant's case was still before the court. The complainant was informed of the Review Council's policy that when a complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

When his court matter concluded, the complainant contacted the office of the Review Council to inform staff that the matter was fully concluded.

In his letter of complaint, the complainant alleged that the justice of the peace's conduct was unprofessional. He alleged that in the case that preceded his, His Worship's tone and demeanour appeared to be irritated with the decisions that the defendant was making.

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He alleged that the justice of the peace seemed annoyed when he asked, “What’s the situation on this one?”

The complainant expressed the view that after the prosecutor told His Worship that the defendant wanted to proceed to trial and was requesting disclosure, His Worship should have acknowledged the defendant’s request and checked on available dates.

Instead, the complainant said that the justice of the peace said to the defendant, “Do you understand the way the section reads, sir? Do you understand the way the section reads? Let me read it to you, so that this may save you a lot of time and effort.” From this, the complainant perceived that justice of the peace was biased.

The complainant referred to other comments made by the justice of the peace in the transcript including:

The Court: So you certainly have a right to a trial but if you had it in your hand, you’re guilty of the offence, you know that, okay?

.....

The Court: “...you have that in your hand, you have committed the offence. It’s as simple as that. You understand that?”

The complainant alleged that the defendant asked for another date and the justice of the peace said, “That’s fine” but then continued by saying, “I mean. You can enter a guilty plea today.”

The complainant alleged that the justice of the peace did not live up to the ethical *Principles of Judicial Office* that require the judiciary to strive to ensure their conduct is such that a reasonable person would have confidence in the appearance of the impartiality of the judiciary.

The complainant alleged that it was only after being subjected to His Worship’s bullying tone of voice that the defendant finally plead guilty.

The complainant alleged that in his own case, the justice of the peace used the same tone and demeanour and that it appeared that His Worship had already found the complainant guilty and he wanted to hurry the guilty plea. He referred to the justice of the peace’s comments that “Speeding’s an absolute liability offence. There’s no excuse for it, unless

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something rather unusual is happening. So it won't take you long...So it won't take long to prepare for this, that's for sure.”

The complainant concluded his letter by stating that “judges should strive to conduct themselves in a way that will sustain and contribute to public confidence in their integrity, impartiality and good judgment. The Canadian judiciary has a strong and honourable tradition in this area which serves as a solid foundation for the appropriate judicial conduct.” In addition, the complainant was of the view that the appearance of impartiality must be assessed from the perspective of a reasonable, fair-minded and informed person.

The complaints committee read the letter from the complainant and ordered and reviewed the full transcripts of the two proceedings. The committee also listened to the audio recording of both proceedings before His Worship.

After reviewing the court record, the committee concluded that His Worship's comments to the complainant and the other defendant appeared to be brief explanations that the offences were absolute liability offences in which a person is guilty if he committed the act, regardless of his or her intention.

The committee noted that His Worship's comments to the complainant that it wouldn't take long to prepare were made in the context of His Worship's decision about how long the adjournment should be.

The committee could understand why the complainant perceived that the justice of the peace was not impartial. The committee observed His Worship's manner appeared to be abrupt and abrasive. The committee noted that His Worship could have asked questions to ensure that the defendant understood that he had the right to have a trial, asked the prosecutor to set out the facts that led to the charge, and asked the defendant if he had any submissions on the appropriate sentence.

However, after considering the nature of the offences and the context in which His Worship's comments were made, the committee concluded that there was no bullying, coercion or partiality. The committee dismissed the complaint on the basis that there was no judicial misconduct. The file was closed.



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### **CASE NO. 29-006/18**

The complainant is a court clerk, who worked with the subject justice of the peace in Provincial Offences Act (POA) court. In her letter of complaint to the Council, the complainant alleged that His Worship lied to her manager about her behavior in court, and was high-maintenance and difficult to work with.

The complainant stated that, on one occasion in POA court, she observed that His Worship was endorsing a form incorrectly. The complainant said that she told the justice of the peace that the clerks took care of the endorsing, and that he should just fill out the green sheet. The complainant indicated that she made this comment in a professional and respectful manner.

She stated that, during the court's recess, His Worship asked her why a particular Information was in youth POA court. She alleged that after she provided clarification to His Worship, he replied, "and there's your explanation", and walked away. The complainant advised that she did not show any disrespect toward His Worship during this conversation.

She recounted that, "the next thing [she knew]", her manager and the acting supervisor asked to speak with her. The complaint said she was brought to a small interview room and informed that His Worship had lodged a complaint against her. The complainant said she was told that His Worship had alleged that she rolled her eyes at him and told him what to do in court.

The complainant stated she has never rolled her eyes at, or shown any disrespect toward, the judiciary. She was "horrified" that the justice of the peace "lied to [her] manager" and was "entirely offended and abhorred that someone would attempt to tarnish" the positive relationships she has with the judiciary by making "false allegations".

The complainant said in her letter that she was extremely upset when she returned to bail court that afternoon. She said she attempted to apologize to His Worship, but he put his hands up and said, "water under the bridge" and "let's go", and would not let her continue. She believed his response to be rude and degrading: "I had just apologized to someone, who, in my opinion, just wanted to remind me where I stand in the pecking order. He lied in order to bring that about."

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The complainant further alleged that the justice of the peace was high-maintenance and demanding. She stated that he asked staff to make copies and print things even though he had his own printer and copier in the justice of the peace suites. She expressed the view that court staff are not personal assistants and “no other Justice of the Peace asks us to do those things.”

The complainant also described an incident where His Worship allegedly expected her to “cater” to him. She alleged that after she typed up a document for a surety looking for a recognizance pending appeal, His Worship said that she should remain in court until the document was signed. She stated, “I had to stand there while His Worship read aloud all the conditions and had the parties sign. That is not our practice. He was disrespectful in the way he spoke. He didn’t ask if I was available to wait, and he even indicated at one point that he was aware I was alone next door. Once again, we are not personal assistants and I found this frustrating.”

More generally, the complainant stated that she is less relaxed when His Worship is presiding, as staff are expected to listen to his “inappropriate conversation topics outside of court with attentive patience”. The complainant indicated that she was concerned about any further interaction with His Worship and did not want to sit in a court with someone who would “lie” about her and “tarnish” her “good name”.

The complaint was assigned to a three-person complaints committee of the Review Council, consisting of a judge, a justice of the peace and a community or lawyer member for review and investigation.

The complaints committee reviewed the letter from the complainant and requested and reviewed the transcript and audio recording of the court proceeding in which the alleged interaction between the complainant and His Worship occurred. Pursuant to section 8(15) of the *Justices of the Peace Act*, the committee retained independent counsel to interview persons with knowledge of the alleged events and to provide transcripts of the interviews to the committee for its review. As part of its investigation, the committee also invited His Worship to respond to the complaint.

The committee observed from His Worship’s response that he had taken the complaint very seriously and genuinely reflected upon his conduct during the alleged events. His Worship recognized that the workplace relationship between himself and the complainant had not been constructive in the past and it could be better. The committee could see that

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His Worship and the complainant had very different perceptions of their interactions and one another's conduct.

In his response, His Worship agreed that the complainant advised him that he was endorsing a form incorrectly. He indicated to the committee that during the court appearance referred to by the complainant, when he explained why he was endorsing the forms in a particular manner, he perceived the complainant to roll her eyes at him in apparent frustration with him. The justice of the peace confirmed that he raised the incident with the complainant's manager because he felt that her behavior in court was not appropriate. The justice of the peace strongly refuted the complainant's assertion that he lied or made false allegations against her to her manager.

The committee noted that the transcript of the court proceeding indicated that the complainant attempted to instruct or correct the justice of the peace regarding his signing of the endorsement while court was in session. The transcript also showed that after His Worship explained why he was endorsing the form in the particular manner, the complainant replied, "we do that".

Regarding the complainant's allegation that His Worship cut her off after she attempted to apologize, the committee observed that in his response, His Worship indicated that he did not intend to be dismissive. His Worship clarified that his intention in stating that the matter was "water under the bridge" was to assist both parties to move on from the incident. His Worship noted that he and the complainant were scheduled to work together that afternoon.

The committee also observed that His Worship did not deny asking court staff for assistance in printing and copying certain materials. His Worship explained in his response that he asked for support that week because his laptop was not functioning properly and the court's Information Technology staff had been unable to fix the problem. The committee noted that His Worship indicated that his main concern was adequately being prepared for court, and that he did not intend to unnecessarily burden court staff.

The committee noted that justices of the peace do not have secretarial staff assigned to assist them.

The committee also observed that His Worship acknowledged that he asked the complainant to wait during the preparation of a recognizance. In his response, he

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explained that he did so because this was his understanding of the proper process to ensure that the individual and their surety were on their way in a reasonable time. He stated that, “this procedure was to facilitate an individual’s release from custody and not for my own convenience”.

Overall, the committee noted that while His Worship did not agree with the complainant’s version of the events, he took responsibility for not building a more positive working relationship with her. The committee observed that the justice of the peace did not attempt to dismiss or minimize the complainant’s allegations, and undertook to be more mindful of his interactions with court staff in light of the concerns raised by the complainant.

After reviewing the information gathered during its investigation, the committee concluded that the parties had different views on their interactions and one another’s conduct. The committee determined that the evidence did not support a conclusion that His Worship lied to the complainant’s manager or misrepresented what he perceived regarding their interaction in court. Moreover, the evidence did not support the allegations that His Worship was demanding, high-maintenance, inappropriate with colleagues, or expected court staff to cater to his needs.

The complaints process through the Review Council is remedial in nature; through the review of one’s conduct, improvements are made as to how situations and individuals are treated and handled in the future. After completing its investigation, the committee concluded that His Worship took the complaint seriously, had reflected on his conduct, and that the complaints process had helped him to understand the importance of continuing to build and maintain positive relationships with court staff. The committee concluded that no further action was required and the complaint was dismissed. The file was closed.

### **CASE NO. 29-007/18**

The complainant appeared before the justice of the peace when she applied for a peace bond against her ex-boyfriend, whom she alleged threatened her personal safety.

She alleged that His Worship informed her that she need not attend the next court hearing as it would be “quite confrontational and scary”. The complainant alleged that His Worship’s advice was wrong because, two weeks later, she received a call from the Crown Attorney’s office to inform her that she should have been present in court.

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The Crown Attorney's office advised the complainant that her matter would still proceed because other applicants had similarly failed to appear for their initial hearings, likely due to some miscommunication.

The complainant indicated that she was very upset and fearful at having caused her ex-boyfriend to come to court and wasting his time. The complainant notes that a new court date was scheduled.

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript of the proceeding before His Worship.

The committee observed that the transcript did not support the allegation that His Worship advised the complainant that the next court date would be "confrontational and scary".

The committee noted that local practices governing set-date hearings for peace bonds vary by jurisdiction. The committee observed that the court record appeared to indicate that in accordance with the local practice in the jurisdiction, the person seeking the peace bond should be present at the initial court appearance. The transcript showed that His Worship informed the complainant that she did not need to attend the return date on the peace bond application.

The committee found that while His Worship should have been aware of the local protocols for initial appearances in peace bond applications, it would not constitute judicial misconduct if he erred in this regard.

As a result of the complaint, the committee was concerned that an inconsistency in the procedures governing appearances in peace bond matters in different court locations and a lack of familiarity with the local practices may be impacting on members of the public, such as the complainant. Accordingly, the committee decided to bring this issue to the attention of the Office of the Chief Justice, so that steps could be taken to ensure that justices of the peace are better informed of the local practices applicable in the jurisdictions in which they preside.

The committee dismissed the complaint on the basis that there was no judicial misconduct. The file was closed.

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### **CASE NO. 29-008/18**

The complainant appeared in court in relation to her application for a peace bond against her ex-boyfriend, whom she alleged threatened her personal safety. She said that she waited from 9:00 a.m. to 12:00 p.m. for the case to be called. The complainant alleged that, “at the last minute”, her ex-boyfriend decided he wanted a lawyer.

She said that Her Worship adjourned court for a lunch recess, even though the matter could have been dealt with in five minutes. The complainant stated that the recess resulted in her waiting an additional hour for a new court date to be scheduled when it took only five minutes to schedule a new date. The complainant complained that she wasted five hours of a working day, which was not “right or fair”.

The complaints committee reviewed the complainant’s letter and ordered and reviewed the transcript of the proceeding before Her Worship. The complaints committee also reviewed the audio recording of the proceeding.

The committee noted that criminal courts are frequently very busy with multiple court lists scheduled in a day. After reviewing the court record, the committee observed that the complainant’s matter was on the 11 a.m. court list. It appeared that the 9:00 a.m. docket of cases continued past 11 a.m. and no cases on that list were called until approximately 12:10 p.m.

The committee observed that the Crown Attorney informed the justice of the peace that he did a “general call-out” for people in the hall during a recess and did not get a response from the complainant at that time. Based on the transcript and audio recording of the proceeding, when court resumed, the Crown Attorney asked that the complainant be paged and she then entered the courtroom.

The transcript showed that the Court indicated that there would be a change in the courtroom and there would be a ten to fifteen minute break. It appeared to the committee that during the break, the Crown Attorney intended to speak with the complainant in the hallway. Although Her Worship returned to Court, the complainant’s matter was not called again until after the lunch break.

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The committee noted that courts generally have a lunch break that occurs around 1:00 p.m. When the Crown Attorney called the matter after the lunch break, the defendant indicated that he wanted to retain a lawyer and the matter was adjourned.

The committee noted that the Crown Attorney has the authority to decide on the order in which cases on the list are called in court. The justice of the peace may not be informed of the reasons why cases are called in a particular order or what discussions may be occurring between the Crown Attorney and the parties. The committee observed that it would have been helpful if the Crown Attorney had explained to the complainant why her matter was not reached and what was occurring.

The committee concluded that the delay in calling the complainant's matter did not constitute judicial misconduct on the part of Her Worship. The committee dismissed the complaint on the basis that there was no judicial misconduct. The file was closed.

### **CASE NO. 29-009/18**

The complainant appeared in court in relation to her application for a peace bond against her ex-boyfriend. She alleged that after three months of the application being in process, Her Worship concluded that the paperwork was wrong and “voided the case” because of an error in the paperwork. In particular, the complainant said that Her Worship decided that the application was invalid because “the office paperwork on top of [her] application” failed to state that the complainant feared for her life and safety “because she was threatened with a shotgun”. The complainant said that this omission was an “office error” for which she was not responsible.

The complainant said that Her Worship said that the complainant would have to “reapply” in order to proceed with her case.

The complainant expressed the view that, “A woman who values a choice of wording over the life and wellbeing and safety on a scared suffering post-traumatic stress individual should *not* be a justice of the peace.”

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript of the proceeding before Her Worship.

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After reviewing the court record, the committee observed that an error was made in the court office in drafting the Information for the peace bond. After examining the Information, Her Worship determined that the Information was a nullity. It was unclear to the committee whether Her Worship considered whether an amendment could have been made to correct the error in the Information.

The committee noted that justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace.

After completing its investigation, the complaints committee concluded that Her Worship's interpretation of the law and her decision that the Information was a nullity and would have to be re-laid were matters of judicial decision-making outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

#### **CASE NO. 29-010/18**

The complainant appeared in court in relation to her application for a peace bond against her ex-boyfriend. She alleged that while a particular date was initially selected for the hearing of her case, His Worship decided that another case would "work better" on that date. Accordingly, the complainant's case was scheduled for a date approximately two weeks after the original date.

The complainant expressed frustration that His Worship refused to schedule her case on the earlier date, given the historic delay of her matter. She indicated that she told His Worship that she had been waiting for this hearing date for four months, and she demanded that she be given the next available hearing date. The complainant indicated that His Worship "refused", and indicated that the date selected was the earliest available return date.

She demanded that "he be spoken to about this wrongful act" and explained that she had been fighting for months to have the matter heard and decided. She explained that her experience with the justice system left her feeling that her case was not being taken seriously.



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The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript of the proceeding before His Worship.

After reviewing the court record, the committee observed that the transcript indicated that His Worship was dealing with multiple court cases that each required hearing dates. The committee noted that, at the time when the complainant's matter was being scheduled, His Worship was also scheduling another hearing on a case that had been called earlier.

The committee observed that the transcript indicated that His Worship received information that the earlier court date was not available because another justice of the peace was already seized of a case scheduled to take six hours on that date and matters were inadvertently double-booked. As a result, another case that was inadvertently double-booked on that date and had to be rescheduled to the next available date. The transcript shows that His Worship determined the earliest date then available for the complainant's matter was the one when it was scheduled.

The committee observed that His Worship's decision in selecting the hearing date was a matter of judicial decision-making outside the jurisdiction of the Council. The committee noted that justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace.

The committee observed that although His Worship may have been abrupt in the manner in which he communicated why the date ultimately scheduled for the complainant's matter was the next available date, he was managing a heavy court list. The committee noted that justices of the peace frequently have heavy caseloads and competing priorities to manage. The committee found no evidence that the complainant's case was not taken seriously.

The committee concluded that there was no judicial misconduct and dismissed the complaint. The file was closed.

### **CASE NO. 29-012/18**

The Review Council received a letter of complaint from a defendant about a justice of the peace who presided over his provincial offences trial. The justice of the peace found the complainant guilty of an offence under the *Highway Traffic Act* and imposed a fine.

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The complainant alleged that His Worship breached his constitutional rights when he proceeded with the trial without the complainant having received full disclosure on the matter, including a “functional CD which was used in court without being authenticated.”

The complainant indicated that during the proceeding, he informed the justice of the peace that he had a right to full disclosure so that he could make full answer and defence, and referred to the case of *R v. Stinchcome*. He alleged that His Worship laughed and rejected his request. He also alleged that His Worship “deliberately lied” when he indicated that he was familiar with *R. v. Stinchcombe*, and proceeded with the hearing despite the fact that the complainant was not provided with disclosure of a CD and all witness statements/notes.

The complainant included a copy of his email to the manager of prosecutions in which he said that His Worship “was laughing during the entire hearing because he knew I was being screwed”. He stated that the manager of prosecution’s “arrogance made a mockery of the justice system today, which was further exacerbated by the fact that [the justice of the peace] not only capitulated to each and every demand [the prosecution] made, but also by the fact he exceeded his judicial authority by entering a plea on my behalf,…”

The committee reviewed the correspondence from the complainant, along with the materials that he enclosed. The committee noted that the complainant’s allegations relating to a manager of prosecutions were outside the jurisdiction of the Council. The Council’s jurisdiction is limited to complaints about the conduct of justices of the peace. The committee informed the complainant that if he wished to pursue his allegations about the conduct of the manager of prosecutions, he would need to contact the Director of Prosecutions for the region where the court case took place.

The committee requested and reviewed the transcript of the proceedings that gave rise to the complaint.

The committee noted that the justice of the peace’s interpretation, application and decisions on the law relating to disclosure and Charter rights were matters of judicial decision-making outside the jurisdiction of the Council. With respect to the complainant’s allegation that His Worship proceeded with the trial without the complainant receiving full disclosure on the matter, the committee noted that defendants have an obligation to raise any matters involving disclosure well in advance of a trial.

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In reviewing the transcript, the committee did not find any evidence to support the complainant's allegation that His Worship laughed during the hearing, or that His Worship lied about his familiarity with *R. v. Stinchcombe*.

The committee concluded that there was no evidence of judicial misconduct and dismissed the complaint. The file was closed.

### **CASE NO. 29-013/18**

The Review Council received a letter of complaint from a defendant who appeared before a justice of the peace on behalf of his father in relation to a parking ticket. He alleged that the justice of the peace “acted poorly and unprofessionally” during the proceedings. He said that she constantly interrupted his submissions “as a method of intimidation”, while allowing the prosecutor to advance full arguments. The complainant also alleged that Her Worship refused to let him enter a plea of his own choosing, despite having been given full authority from his father over trial strategy. He said that Her Worship instead told him to speak to the prosecutor in the hallway outside the courtroom “to try to work out a deal”. He said that Her Worship left him with “the impression that the Prosecutor and the Justice of the Peace were working together to get a conviction”.

The complainant alleged that the justice of the peace treated him unfairly during the proceeding. For example, he said that she chastised him for taking a sip of water in court, even though both the prosecutor and court reporter had large cups of coffee in front of them. He believed that Her Worship gave the prosecutor “special treatment” and conducted the proceeding in an “unfair and prejudicial” manner.

The complaints committee reviewed the complaint letter and the transcript of the court proceedings over which Her Worship presided. One of the committee members also reviewed the audio recording of the proceedings.

The committee noted that the disparity of power between a justice of the peace, and a defendant requires that a justice of the peace treat a defendant with courtesy, patience and understanding. The committee noted that public perceptions of the administration of justice are greatly impacted by the demeanour, conduct and comments of a justice of the peace in the courtroom. Conduct such as interrupting or scolding defendants, and

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making comments that may be seen as discouraging them from exercising their right to a trial can cast disrepute on the judicial office.

The committee noted that when a defendant chooses to be represented by a family member, that family member has the right to be treated with respect, politeness and civility. Condescension, curtness and impatience on the part of a judicial officer in the courtroom can have a significant impact on the fairness of the proceedings, the legal interests of the defendant and public confidence in the administration of justice.

The committee noted that a justice of the peace has an obligation to assist a litigant who is not represented by counsel or a paralegal to understand his or her right to a trial and the trial process. All judicial officers are required to take the requisite time to listen to parties who come before them, and afford both sides an equal opportunity to make submissions on the issues to be decided. If a party has no legal training, the justice of the peace must be mindful of how he or she communicates with the litigant to avoid giving rise to a perception of bias.

While the committee appreciated the demands upon a justice of the peace in a busy courtroom, it noted that the rights of parties should not be perceived to be sacrificed for the sake of expediency. While justices of the peace should make efforts to dispose of matters in a timely manner, they must do so having regard to the interests of justice and the rights of the parties before them. Justice must not only be done, it must be seen to be done.

The committee observed from the transcript that:

- ◆ Her Worship frequently interrupted the complainant and appeared to treat him with impatience, leaving him with the impression that he did not have an opportunity to be fully heard and make submissions;
- ◆ Her Worship appeared to be willing to grant the complainant two options: an adjournment to pursue the *Charter* application; or, the complainant could enter a guilty plea; and
- ◆ Her Worship did not appear to fully understand that an individual may, in accordance with the law and the by-laws passed under the *Law Society Act*, provide the same legal services for family members as a licensed paralegal.

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The committee was concerned that Her Worship's comments left the complainant, and perhaps others in the courtroom, with the impression that she was selectively choosing pleas. The committee observed that Her Worship's manner and comments in court could be perceived as abrupt and demonstrating impatience toward the complainant and his lack of understanding of the court and the legal process. The committee noted that frequent interruptions of a defendant's representative, while permitting the prosecutor to speak for the Court, can give rise to a perception of unfairness and can contribute to an appearance that the judicial officer is not maintaining order and decorum in the courtroom.

The committee observed that the transcript showed that Her Worship told the complainant, "We don't drink in court; put the glass down, thanks." The committee noted that courts often provide pitchers of water and glasses for staff, lawyers, judicial officers, agents and parties.

The committee invited Her Worship to respond to the complaint, and received and reviewed her response. The committee could see that Her Worship had reflected on her conduct. The committee observed that before she was informed of the concerns raised by the complainant, she had not appreciated the perceptions left by her conduct during the proceeding with the complainant. She had reviewed the transcript and listened to the audio recording. Her Worship deeply regretted her conduct towards the complainant and was disappointed in herself.

Her Worship explained that it was not her intention to force a plea on the complainant. She had felt that the matter should be adjourned so that the defendant's *Charter* application could be properly put forward and determined. She regretted that her comments were perceived as intimidating or pressuring the complainant. After listening to the audio recording, Her Worship regretted that she had not been as sensitive to his concerns as she should have been. She acknowledged that she should have been more patient and that the way she expressed herself was at times unhelpful. She regretted that the perception left with the complainant was that the process was unfair and that she was being rude.

Her Worship explained that she had thought that there should not be drinks or food in the courtroom unless necessary for health reasons, and that drinking was not permitted due to her understanding of proper decorum in the courtroom. The committee could see that it was not her intention to treat the complainant or the defendant differently or unfairly.

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The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. The committee concluded that Her Worship had taken the complaint very seriously. She had reflected upon her conduct and she could understand why the complainant felt that she failed to remain patient and courteous. She undertook to take steps in the future to more carefully consider how her comments may be perceived. She is much more aware of the importance of a justice of the peace being mindful of her comments and the manner in which they are said in order to maintain the public's respect and confidence in the judiciary and in the justice system.

The committee concluded that no further action was needed and dismissed the complaint. The file was closed.

### **CASE NO. 29-016/18**

In his complaint to the Council, the complainant alleged that the justice of the peace improperly denied four private Informations on the ground that the offences could not be given process because they took place in another jurisdiction. The complainant stated that this was "false", and that formal charges should be laid against Her Worship. The complainant also indicated that the justice of the peace should be removed from office or resign "due to her inability to maintain civil procedure and abide by the rules set out in parliament".

The complaints committee reviewed the correspondence from the complainant, and ordered and reviewed the transcript of the proceeding before Her Worship. The committee also ordered the audio recording of the proceeding.

After reviewing the transcript, the committee observed that Her Worship noted that the complainant had filed private complaints against persons in another jurisdiction. The justice of the peace explained to the complainant that the Informations should be processed in the territorial jurisdiction in which the matters occurred. On this basis, she declined to issue process and directed the complainant to attend court in the jurisdiction in which the offences allegedly occurred for a pre-enquête hearing to determine whether the criminal charges should proceed.

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The committee observed that the transcript indicated that the complainant reappeared before Her Worship that same day, and sought to have her reconsider her decision to deny process on the Informations. He also sought to lay two additional charges: one against Her Worship for not issuing process and one against the police officer who had previously asked him to leave the courtroom. Her Worship reiterated her decision to decline to issue process on the prior Informations, declared a conflict on the Informations against herself and the police officer and also declined to hear those charges.

The committee observed that Her Worship's application and interpretation of the law, and her decision to decline to issue process, were matters of judicial decision-making outside the jurisdiction of the Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

After completing its investigation, the complaints committee concluded that there was no support for the complainant's allegations, and that the allegations concerned matters of judicial decision-making outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

### **CASE NO. 29-017/18**

The complainant appeared before the justice of the peace for a pre-enquête hearing. A pre-enquête hearing is a proceeding to determine whether there is sufficient evidence for criminal charges to be laid by a private individual against another person.

In his letter to the Council, the complainant stated that His Worship declined to issue process even though it was "lawful" and "the right decision". He alleged that the justice of the peace's decision was based on the complainant's sex and the "sex of the defendant". The complainant stated that His Worship was "bias [*sic*], sexist, discriminatory, [and] unprofessional" and engaged in misconduct with respect to "criminal and penal process and procedure". He also claimed that the justice of the peace falsely and improperly asserted that the Information was "trivial and vexatious".

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The complaints committee reviewed the correspondence from the complainant, and ordered and reviewed the transcript of the proceeding before His Worship.

Based on its review of the record, the committee found no evidence to support the complainant's allegation that His Worship discriminated against him based on his sex, or that he was "bias [*sic*], sexist and unprofessional". The committee observed from its review of the transcript that His Worship was patient and respectful toward the complainant throughout the proceedings, and allowed him to make full submissions on the evidence. The committee also observed that, in providing his reasons for decision, the justice of the peace explained why the evidence did not support criminal charges being laid.

The committee concluded that the allegations of misconduct were not supported by the evidence, and that His Worship's application and interpretation of the law, including his decision to decline to issue process, were matters of judicial decision-making outside the jurisdiction of the Council.

Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

After completing its investigation, the complaints committee concluded that there was no support for the complainant's allegations, and that the allegations concerning matters of judicial decision-making were outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

### **CASE NO. 29-018/18**

The complainant, a licensed paralegal, alleged that the subject justice of the peace did not show restraint during twenty-five court appearances related to a particular court matter. The complainant alleged that the justice of the peace made remarks that interfered with the paralegal-client relationship, used a condescending tone and made statements that gave rise to an apprehension of bias against the complainant.



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A file was opened and assigned to a complaints committee for review and investigation.

Before a final determination could be made on the complaint, the Review Council received confirmation that His Worship was no longer a justice of the peace. As he was no longer a justice of the peace, the Review Council has no jurisdiction to continue its complaints process in relation to the complaint. The complaint file was administratively closed due to a loss of jurisdiction.

### **CASE NO. 29-019/18**

The complainant appeared before a justice of the peace for a trial in provincial offences court. The complainant alleged that the justice of the peace dealt on a regular basis with the Special Constable who testified in the trial and that there was casual conversation between His Worship and the Special Constable during court. The complainant alleged that His Worship had a conflict of interest and that his decision could have been affected by his relationship with the Special Constable.

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript of the trial before His Worship.

The committee found no evidence in the transcript to support the allegations that His Worship had casual conversation during court with the Special Constable. The committee found no evidence of a conflict of interest or that His Worship had a relationship with the Special Constable that would affect his decision.

The committee noted that the transcript indicated that in making his decision as to whether the complainant was guilty of the offences, His Worship considered the evidence of all witnesses, including admissions made by the complainant when the prosecutor cross-examined him.

The committee dismissed the complaint and the file was closed.

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### **CASE NO. 29-024/18**

The complainant wrote to the Council following his bail hearing before a justice of the peace. In his letter of complaint, he indicated “I regret to inform you one of your own has gone bad.”

The complainant alleged that the justice of the peace faked and corroborated a trial, swore in witnesses, committed a conflict of interest as she had previously detained the complainant on charges stemming from another matter, changed the courtroom at the last minute, and “committed high treason and corruption”.

The complainant stated that he was still on probation because of lies.

The materials provided by the complainant indicated that he attempted to lay a private Information against his probation officer. He provided a copy of a probation order, as well as materials relating to his psychologist’s assessment. He also included an excerpt of the transcript of the bail hearing.

The committee reviewed the correspondence from the complainant, along with the materials that he enclosed. The committee noted that the complainant had made handwritten notes on the excerpt of the bail hearing that indicated he disagreed with some of the evidence that was put forward and he disagreed with Her Worship’s decision that he should be detained.

The committee noted that the justice of the peace’s assessment of the evidence and her decision in the case were matters of judicial decision-making outside the jurisdiction of the Review Council. If the complainant wanted to pursue those matters, the proper way to proceed was through remedies in the courts.

The committee ordered and reviewed the transcript of the bail hearing before the justice of the peace.

The committee observed that the complainant was represented by Duty Counsel at the bail hearing and no motion was brought by him to argue that there was a conflict of interest. The committee noted that it was not uncommon for justices of the peace to preside over more than one bail hearing in relation to a defendant. The committee observed that there was no evidence in the transcript to indicate any bias or lack of objectivity on the part of the justice of the peace.

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The committee found no evidence in the transcript to support the allegations.

The committee noted that the complainant said in his letter that if he could not get help from the Review Council, he wanted to know how he could charge his ex-probation officer. The complainant was referred to the Law Society Referral Service so that he could obtain legal advice.

The committee concluded that there was no judicial misconduct and dismissed the complaint. The file was closed.

### **CASE NO. 29-025/18**

The complainant appeared before the subject justice of the peace for a pre-enquête to determine whether charges should be laid against a member of the Ontario Provincial Police (OPP). Her Worship found that there was no reasonable prospect of conviction, and did not issue process in the matter.

In his letter of complaint to the Council, the complainant alleged that the justice of the peace “failed to deliver independent and impartial justice”. He stated that Her Worship refused to allow criminal charges to proceed against the peace officer because he was an actor of the OPP. He claimed that the justice of the peace was conflicted because she wanted to charge the complainant with an illegal highway traffic offence, while allowing an actor of the OPP to “violate” the *Criminal Code*. He concluded that Her Worship “was giving a pass for [the officer’s] criminal activities”, while he “was being railroaded into lying to the court, pleading guilty and extorted for money”.

The complaints committee reviewed the letter from the complainant and ordered and reviewed the transcripts of the proceeding before the justice of the peace.

The committee observed from its review of the transcripts that Her Worship actively listened to the complainant’s submissions, and asked questions in order to ensure that she understood his evidence. She also took the time to review the voluminous paperwork filed by the complainant. The committee found no evidence to support the complainant’s allegations that Her Worship was conflicted or that she was not impartial toward the police. The committee observed from the transcripts that Her Worship explained the legal basis for her decision to decline to issue process in the matter.

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While the complainant disputed Her Worship's assessment of his case, the committee noted that Her Worship's decision to not issue process, including her assessment of the evidence and interpretation of the law, were matters of judicial decision-making outside the jurisdiction of the Review Council. The committee noted that justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to alter a decision of a justice of the peace.

The committee observed from the transcripts that Her Worship was kind, patient, courteous and helpful toward the complainant throughout the proceedings. She provided him with information on other avenues to pursue his allegations of police misconduct, and suggested practical solutions to assist him to resolve the outstanding charges against him under the *Highway Traffic Act*.

Finally, the committee observed from the transcripts that, on multiple occasions throughout the proceeding, the complainant commended Her Worship for her kindness and assistance on his matter. For example, prior to the matter being adjourned for the day, the complainant said a prayer for Her Worship:

[The complainant]: Heavenly Father, we just thank you for this time. We just thank you for Her Worship and how kind and loving she is, and we thank you for that, Lord. We thank you for her commitment to solving problems. And Heavenly Father, I do thank you for her, her service to the community, and all that she does to help people. I pray, Heavenly Father, that you will continue to bless her and those most dear to her heart. In the name of our Lord and Savior Jesus Christ. Amen.

The committee also noted from the transcripts that although Her Worship ultimately declined to issue process, the complainant thanked her at length at the conclusion of the hearing:

[The complainant]: And I've come to see you again because I have the utmost respect for you, to be honest, having dealt with courts and whatnot. I haven't found anyone as caring".

The Court: Mm-hmm

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- [The complainant]: And with an honest intent to do good, and...
- The Court: Well, that's very kind. I'm glad it came across.
- [The complainant]: And it's the truth. You know, in dealing with you, your personality, and your earnest sincerity comes forward, and I've seen that, and that's sort of why I'm here again today.
- ...
- [The complainant]: And I can't tell you how much it impressed on me that you were so kind to look into that for me. It really touched my heart.
- The Court: Fair enough. Thank you. I try to deal with everyone fairly.
- [The complainant]: You're a wonderful person, and I thank God for you.
- The Court: Thank you. Take care.
- [The complainant]: Take care. Cheers.

After completing its investigation, the complaints committee concluded that there was no support for the allegations of misconduct against the justice of the peace, and the allegations related to her decision-making were outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

### **CASE NO. 29-026/18**

The complainant appeared before the justice of the peace for a pre-enquête hearing. (A pre-enquête hearing is a proceeding to determine whether there is sufficient evidence for criminal charges to be laid by a private individual against another person).

In his correspondence to the Council, the complainant alleged that the justice of the peace was corrupt, belligerent, harassing and incompetent. He alleged that His Worship "did not want to listen to evidence", "did not accept objections and did not think or reason correctly". The complainant also stated that His Worship directed the "manager of the

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court” not to give him the audio recording of the proceeding so that his case could not be appealed and the “judicial council” could not hear the audio.

The complainant asserted that His Worship’s conduct was “unbecoming”, and that he allowed his personal conduct and bias to influence his decision-making. He indicated that the justice of the peace “refused to accept [his] complaint and willfully mislead [sic] the court by contradicting the evidence presented”. The complainant further alleged that the justice of the peace sexually harassed a female police officer “by looking at her and not looking at the evidence”.

The complaints committee reviewed the correspondence from the complainant, and ordered and reviewed the transcript of the proceeding before His Worship. The committee also ordered and reviewed the audio recording of the proceeding.

Based on its review of the audio recording, the committee observed that, at times, His Worship’s tone appeared to be abrupt and his manner impatient toward the complainant. While the committee recognized that the justice of the peace could have taken a more courteous and patient tone while conducting the hearing and better ensured that the complainant understood the process it found no evidence in the record to support the allegations that His Worship was corrupt, biased, belligerent, incompetent or that he engaged in harassment.

Nor did the committee find any support for the allegation that His Worship refused to allow the complainant access to the audio recording of the proceeding, or that he “willfully mislead [sic] the court”.

The committee observed that the complainant appeared to disagree with His Worship’s assessment of the evidence and his decision not to issue process. The committee noted that justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

Accordingly, His Worship’s application and interpretation of the law, including his decision to decline to issue process, were matters of judicial decision-making outside the jurisdiction of the Council.

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The committee concluded that the allegations of misconduct were not supported by the evidence, and the allegations regarding His Worship's assessment of the evidence and application of the law were matters of judicial decision-making outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

### **CASE NO. 29-027/18**

The complainant appeared before the justice of the peace for a pre-enquête hearing. (A pre-enquête hearing is a proceeding to determine whether there is sufficient evidence for criminal charges to be laid by a private individual against another person).

In his correspondence to the Council, the complainant alleged that the justice of the peace:

- ◆ “willfully contradicted himself and abused his authority by belittling [him], using false information and misleading arguments while in the service of his position”;
- ◆ willfully sought to lie “and circumvented the rules of the court by trying to have the Crown withdraw a private Information”; and
- ◆ “attempted to use the police unlawfully to exact his will on the bench”.

The complainant requested that His Worship be arrested. In a further letter to the Council, the complainant also made allegations of misconduct against a specific police sergeant.

The complaints committee reviewed the correspondence from the complainant, and ordered and reviewed the transcript of the proceeding before His Worship.

The committee observed that the record did not support any of the complainant's allegations against the justice of the peace. Based on its review of the transcript, the committee observed that His Worship allowed the complainant a full opportunity to make submissions and took the time to consider his evidence. The committee also observed that His Worship provided a well-reasoned judgment.

The committee found no support for the allegations that the justice of the peace belittled the complainant, used false information, lied, or “attempted to use the police unlawfully”. Further, it did not find any support for the allegation that His Worship “circumvented the rules of the court by trying to have the Crown withdraw a private information”. The

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committee noted that the decision to withdraw a charge is within the authority of the prosecution, and a justice of the peace has no legal authority to override that discretion.

The committee concluded that the allegations of misconduct against the justice of the peace were unfounded. With respect to the allegations against the police, the complainant was informed that the Council has no authority to review the conduct of police officers. The complainant was referred to the Office of the Independent Police Review Director.

The committee dismissed the complaint and closed the file.

#### **CASE NO. 29-028/18**

The complainant appeared before a justice of the peace in provincial offences court in relation to a charge of going through a red light, detected by a camera. In her letter, the complainant said that she entered a “guilty plea with surrounding circumstances”. With her letter, she enclosed copies of photographs and a map of the intersection of the area where the red light was installed.

She said that the justice of the peace requested that she summarize her opening statement, rather than read it.

The complainant alleged that Her Worship projected her own personal experience onto the circumstances, referring to the fact that she went through the intersection regularly and could navigate it without problems.

She also alleged that Her Worship referred to the need to move along because other people were in the courtroom waiting.

The complainant said that Her Worship referred to other people’s comments about the red light program and projected those comments onto the complainant. The complainant also alleged that Her Worship suggested that the complainant should take her politics elsewhere. The complainant said it was suggested to her that the Ontario Court of Justice was not an appropriate forum to bring forward concerns about the red light program. The complainant expressed the view that the Court is responsible for prosecuting all red light camera offenders and “is an influencing body in decisions regarding the program”. The complainant also said that Her Worship did not permit her to read her closing statement.



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The complainant concluded that she did not feel that she received a fair trial. She felt that she was pressured into not presenting her case properly because the justice of the peace felt pressured to move on, was impatient to move on, and “personally disagreed with my reason for going to trial.”

The committee ordered and reviewed the transcript and audio recording of the proceeding. The committee observed that the transcript showed that the complainant entered a guilty plea and that the justice of the peace did not pressure her into entering a guilty plea. The committee noted, however, that the complainant was self-represented and appeared to expect that she could make an opening and closing statement, including comments about the red light program in general. The committee observed that Her Worship could have taken steps to explain the court process so that the complainant would have better understood how the process works.

The committee noted that it would have been helpful if Her Worship had explained to the defendant that in Ontario, there are two options for a defendant who appears for a trial in provincial offences court: the defendant has a right to plead not guilty and to have a trial; or, he or she can decide to give up his or her right to a trial and plead guilty. There is no option under the law to plead “guilty with an explanation”. If a person pleads guilty, it means that he or she admits to breaking the law.

The committee observed that the transcript indicated that Her Worship did not explain to the complainant that when a defendant pleads guilty, he or she does not have the procedural right to present an opening or closing statement. The committee observed that the transcript showed that Her Worship allowed the complainant the opportunity to say almost all of what she wanted to say in her opening statement to the Court.

The committee observed that the transcript showed that in response to the complainant putting forward her concerns about the red light camera program, Her Worship appeared to enter into a dialogue about the program and she made comments about the number of times she had personally gone through the intersection. The committee noted that Her Worship could have briefly explained that it is not the function of a justice of the peace to consider the appropriateness of legislation; rather, a justice of the peace must apply the law as it exists.

The committee noted that a justice of the peace has a duty to conduct court business with due diligence and dispose of all matters promptly and efficiently having regard to the

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interests of all parties before the Court. It was not inappropriate for Her Worship to refer to the fact that there were other people waiting.

The committee concluded that while the justice of the peace could have taken steps to provide a better understanding for the complainant of the process and of the role of a justice of the peace, there was no judicial misconduct. The complaint was dismissed and the file was closed.

### **CASE NO. 29-030/18**

The Council received a letter of complaint from a retired police officer who was acting as a paralegal for a defendant. His complaint arose from a decision made by a justice of the peace who denied the defendant's request for a second reopening after the defendant was convicted of a provincial offences matter. The justice of the peace who denied the request had endorsed the *Record of Reopening Application* with "delay tactics".

The complainant alleged, "This seems very simple to me, he knows me personally and professionally, I explained in advance that I was sick. People do get sick especially when it takes a case three years. It was not DELAY TACTICS and he damned well knows it. Check his reply...did he really mean to strike out 'conviction' but changes his mind? Was he a little confused?"

Before a disposition could be communicated to the complainant in relation to the matter, the Review Council received confirmation that His Worship was no longer a justice of the peace. As he was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process in relation to the complaint. The complaint file was administratively closed due to a loss of jurisdiction.

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**APPENDIX B**

**POLICY ON  
EXTRA-REMUNERATIVE  
WORK AND  
APPLICATIONS  
CONSIDERED**

**Note:**

This version of the procedures reflects decisions of  
the Review Council up to December 31, 2018.

For current procedures, please see the Review Council's website at:

**[www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/)**

## APPENDIX B

# Policy on Extra-Remunerative Work and Applications Considered

## POLICY OF THE JUSTICES OF THE PEACE REVIEW COUNCIL RE: EXTRA-REMUNERATIVE WORK

### **CRITERIA & PROCEDURE FOR APPROVAL**

- 1) Effective January 1, 2007, all justices of the peace, whether presiding or non-presiding, are required to seek the written approval of the existing Justices of the Peace Review Council before accepting or engaging in any extra-remunerative work, in accordance with section 19 of the *Justices of the Peace Act*, as amended January 1, 2007.

s. 19; subs. 8(2)(e)

- 2) All such applications to the Justices of the Peace Review Council will be considered by the Review Council at the earliest possible opportunity and the justice of the peace will be advised of its decision, in writing.

### **Application Procedure**

- 3) An application for such approval must be made by the justice of the peace to the Justices of the Peace Review Council, in writing, prior to accepting or engaging in other extra-remunerative work and must set out a detailed explanation of the activity for which approval is sought, an estimate of the time commitment required and the amount of the remuneration. The applicant must also address in his or her letter each of the criteria indicated below that will be considered by the Review Council.
- 4) This application must be accompanied by a letter from the relevant Regional Senior Justice of the Peace providing his or her opinion with respect to any concerns about potential impacts related to scheduling and the applicant's assignment of duties.
- 5) The Council looks at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration

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# Policy on Extra-Remunerative Work and Applications Considered

to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's Extra-Remunerative Policy are considered.

6) The following are some of the criteria which should be addressed by the applicant in the letter of application and which will be considered by the Review Council in assessing whether or not approval will be granted:

a) whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought (*examples of potential conflict of interest include: employment by government in any capacity related to the administration of justice, the courts or corrections, engagement in the practice of law, employment in a legal clinic or a law firm, etc.*);

b) whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned;

c) whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

The Council has noted that the criterion in paragraph c) above must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act*, 2006, S.O. 2006, c. 21. The amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act*, 2006, and the *Principles of Judicial Office of Justices of the Peace*

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# Policy on Extra-Remunerative Work and Applications Considered

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*of the Ontario Court of Justice*, the Review Council has determined that it would, in general, be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work.

The Review Council has approved some applications for approval to engage in extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's procedures, an applicant who seeks approval to engage in commercial activity should address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

### ***Additional Information***

- 7) If upon its review of the application, the Review Council is not satisfied that there is sufficient information, the Review Council may request such additional information as the Review Council may deem necessary and relevant, including information from the justice of the peace, the Regional Senior Justice of the Peace or any other person.

### ***Approval of Application without Conditions***

- 8) If, upon its review of the application and any additional material, the Review Council is satisfied that there is sufficient information to approve the application, without conditions, the Review Council will approve the application. The applicant justice of the peace will be advised in writing of the decision of the Review Council, including brief reasons for the decision.

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### ***Opportunity to Respond to Concerns***

- 9) If, upon its review of the application and any additional information, the Review Council has concerns about granting the application, the Review Council will provide a letter to the applicant justice of the peace setting out its concerns. The Review Council may also suggest conditions of approval to address those concerns.
- 10) The justice of the peace will be given an opportunity to respond to the concerns of the Review Council and to respond to any suggested conditions by sending submissions in writing to the Review Council. If the justice of the peace agrees with the conditions, he or she should respond to the Review Council confirming his or her agreement with the approval being contingent upon the conditions.
- 11) The justice of the peace will be given thirty calendar days to respond from the date of the letter from the Review Council expressing its concerns. If a response is not received from the applicant justice of the peace within that time, the Review Council members considering the request will be notified and a reminder letter will be sent to the justice of the peace. If no response is received within ten calendar days from the date of the reminder letter, the Review Council will proceed in the absence of a response.

### ***Decision***

- 12) The Review Council will consider the response of the justice of the peace, if any, in making its decision. The justice of the peace will be advised in writing of the Review Council's approval of the application and of the conditions, if any, upon which the approval is contingent. In the alternative, the justice of the peace will be advised in writing that the request has not been approved. Brief reasons will be provided for the decision.

### ***No Authority to Order Compensation for Legal Costs***

- 13) The Review Council does not have legislative authority to recommend or order compensation for costs of legal services incurred as a result of an application for extra-remunerative work.

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# Policy on Extra-Remunerative Work and Applications Considered

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### ***Application Process in Private***

- 14) Any meeting of the Review Council regarding applications for extra-remunerative work shall be conducted in private. Pursuant to section 8(18) of the *Justices of the Peace Act*, the Review Council has ordered that any information or documents relating to any meeting of the Review Council to consider an application to engage in extra-remunerative work are confidential and shall not be disclosed or made public.

subs. 8(18)

### ***Quorum of Review Council***

The usual rules for composition and quorum apply to meetings for the purposes of considering applications for extra-remunerative work. The Chief Justice of the Ontario Court of Justice, or in his or her absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair meetings held for the purposes of considering applications for extra-remunerative work. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for approval of extra-remunerative work. At least half of the members present must be judges or justices of the peace. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 8(7),(8) and (11)

### ***Annual report***

- 15) After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs including a summary of each application for approval of extra-remunerative work received or dealt with during the year and the decision of the Review Council, but the report shall not include information that might identify the justice of the peace or the Region in which he or she presides.

subs. 9(7)

Amended at Toronto, June 4, 2010.



## Policy on Extra-Remunerative Work and Applications Considered

# APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK

Applications for approval of extra-remunerative work are given File names starting with ER indicating the nature of the application, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., File No. ER-29-001/18 was the first application for approval in calendar year 2018).

Names of applicants are not included in the case summaries.

### ***CASE NO. ER-28-009/17***

The Council approved an application by a justice of the peace to teach a course about regulatory offences at a law school from January to April of 2018.

The Council noted that the Regional Senior Justice of the Peace indicated that Her Worship's involvement with this program would not interfere with her ability to fulfill her judicial duties. The Regional Senior Justice of the Peace confirmed that this extra remunerative work had not caused any scheduling or assignment of judicial duties issues in the past.

The approval was subject to the following conditions:

- 1) The terms and conditions of employment, including the remuneration, must be the same as those of other instructors without regard to the position as a justice of the peace.
- 2) The Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.
- 3) Her Worship's availability to instruct must not impact upon her availability to fulfill her primary responsibilities as a justice of the peace during assigned hours. As such, her availability to instruct or carry out any duties related to teaching must be undertaken at times when she is not otherwise assigned to judicial duties and where she has requested either vacation or lieu time off. Non-presiding days should not be used for such purposes.

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# Policy on Extra-Remunerative Work and Applications Considered

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- 4) Her Worship must maintain appropriate distance in the teaching of this course from her role and responsibilities as a judicial officer. In doing so, she must recognize that although the views she expresses are personal and do not reflect official Ontario Court of Justice policy, she must be cautious about expressing personal views that are inconsistent with her duty to apply the law as a justice of the peace.
- 5) Her Worship must refrain from using the Court's email network, computer or other resources for any purpose related to her teaching activities, as those resources are provided for purposes associated with her official responsibilities.
- 6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

### **CASE NO. ER 29-001/18**

The justice of the peace had previously obtained approval to engage in extra-remunerative work as a Commissioned Reserve Officer in Her Majesty's Canadian Armed Forces (Royal Canadian Navy). Pursuant to the conditions attached to the initial approval, His Worship was required to advise the Council of any changes in the status of his participation. His Worship wrote to the Council to inform it of the opportunity of a promotion to take on the role as a Commanding Officer in the Royal Canadian Navy.

The Council noted that in his letter, His Worship confirmed that the promotion involved a change in rank but it would not significantly affect the amount of time he would need to dedicate to his new role, and that he was only on duty one or two evenings per week and some weekends, which would be personal time.

Based on the information provided, the Council was satisfied that the requirements of the new position would not present an intrusive demand on His Worship's time, availability, or ability to properly perform the judicial duties assigned. Further, the Council had no concern that the public would perceive military service to be inappropriate or unseemly.

The Council also noted that the Regional Senior Justice of the Peace had confirmed that he has no concerns about any potential impacts to scheduling or to His Worship's assignment of judicial duties if the request was approved.

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# Policy on Extra-Remunerative Work and Applications Considered

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The Council approved the request to engage in continued extra-remunerative work in the new role, subject to the following conditions:

- 1) Any remuneration paid to His Worship must be the same as that paid to other Commanding Officers without regard to the position as a justice of the peace.
- 2) His Worship must seek approval for leave required for his responsibilities as a Commanding Officer from the Associate Chief Justice of the Ontario Court of Justice.
- 3) His Worship must maintain his distance as a Commanding Officer from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position.
- 4) Should the status of his participation change, His Worship must advise the Review Council in writing in order that the appropriateness of the extra-remunerative work may be re-considered.
- 5) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

### **CASE NO. ER 29-002/18**

The Council approved an application by a justice of the peace to engage in extra-remunerative work teaching “Introduction to Canadian Law” at an American Law School during its 2019 summer program.

The Council noted that educational teachings by justices of the peace should not present any potential negative impact on judicial responsibilities or principles of office or pose issues relating to fulfilling scheduling obligations at a base court location. The Council observed that Her Worship undertook that the teaching activities would be restricted to vacation days and the Regional Senior Justice of the Peace had no concerns about potential impacts related to scheduling and Her Worship’s assignment of duties.

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# Policy on Extra-Remunerative Work and Applications Considered

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The approval of the application by the Council was granted, subject to the conditions below:

- 1) The Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.
- 2) It is the view of the Council that a justice of the peace's availability to instruct must not impact upon his or her availability to fulfill the primary responsibilities as a justice of the peace during assigned hours. Her Worship's availability to carry out any other tasks related to teaching must be undertaken at times when she is not otherwise assigned to judicial duties and where she has requested either vacation or compensating time off such as earned lieu days. The Council is of the view that non-presiding days should not be used for such purposes.
- 3) Her Worship must maintain appropriate distance in the completion of the teaching of this course from the role and responsibilities as a judicial officer, including in any promotional and other course materials.
- 4) Her Worship may accept remuneration for the teaching, but such remuneration must be the same as that paid to other instructors without regard to the position as a justice of the peace.
- 5) Her Worship must refrain from using the Court's email network, computer or other resources for any purpose related to her teaching activities, as those resources are provided for purposes associated with her official responsibilities.
- 6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

### **CASE NO. ER 29-003/18**

The justice of the peace requested approval to teach a course about regulatory offences as a sessional instructor at a law school. The course was scheduled on Monday evenings from January through to April 2019. In addition to class time, Her Worship indicated that she would expect to spend five to ten hours per week in preparation.

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# Policy on Extra-Remunerative Work and Applications Considered

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Her Worship indicated that the course speaks directly to issues addressed in her day-to-day work as a justice of the peace, and she believed that any preparation time would assist her with her justice of the peace functions.

The Council noted that the Regional Senior Justice of the Peace expressed the view that Her Worship's involvement with this program would not interfere with Her Worship's ability to fulfill her judicial duties. His Worship advised that this extra remunerative work had not caused any scheduling or assignment of judicial duties issues in the past.

The Council approved of the request, subject to the conditions set out below:

- 1) The terms and conditions of employment, including the remuneration, be the same as those of other instructors without regard to Her Worship's position as a justice of the peace.
- 2) The Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.
- 3) It is the view of the Council that a justice of the peace's availability to instruct must not impact upon his or her availability to fulfill the primary responsibilities as a justice of the peace during assigned hours. As such, Her Worship's availability to instruct or carry out any duties related to teaching must be undertaken at times when she is not otherwise assigned to judicial duties and where she has requested either vacation or lieu time off. The Council is of the view that non-presiding days should not be used for such purposes.
- 4) Her Worship must maintain appropriate distance in the teaching of this course from her role and responsibilities as a judicial officer. In doing so, she must recognize that although the views she expresses are personal and do not reflect official Ontario Court of Justice policy, she must be cautious about expressing personal views that are inconsistent with her duty to apply the law as a justice of the peace.
- 5) Her Worship must refrain from using the Court's email network, computer or other resources for any purpose related to the teaching activities, as those resources are provided for purposes associated with her official responsibilities.
- 6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

## APPENDIX B

# Policy on Extra-Remunerative Work and Applications Considered

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### **CASE NO. ER-29-004/18**

The justice of the peace applied for approval of extra-remunerative work teaching two sections of a course called *Evidence and Litigation Process*.

The Council noted that the Regional Senior Justice of the Peace had no concerns about potential impacts related to scheduling and His Worship's assignment of duties.

It is the view and preference of Council that educational teachings by justices of the peace be engaged in during the evenings rather than during weekdays, so as not to present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location. In this case, the Council was informed that the course was not offered in the evenings. The Council notes that His Worship undertook that he would be using vacation days to teach the course. As well, he assured the Council that his teaching activities would not affect his ability to fulfill his duties as a justice of the peace.

The Council granted approved of the application subject to the conditions below:

- 1) The Council's approval of the request must present no difficulties to His Worship fulfilling judicial assignments during the period of teaching.
- 2) His Worship's availability to instruct must not impact upon his availability to fulfill his primary responsibilities as a justice of the peace during assigned hours. As such, his availability to instruct must be undertaken at times when he is not otherwise assigned to judicial duties and where he has requested either vacation or compensating time off such as earned lieu days. The Council is of the view that non-presiding days should not be used for such purposes.
- 3) His Worship must maintain appropriate distance in the completion of the teaching of this course from his role and responsibilities as a judicial officer.
- 4) His Worship may accept remuneration for the teaching, but such remuneration must be the same as that paid to other instructors without regard to his position as a justice of the peace.

## APPENDIX B

# Policy on Extra-Remunerative Work and Applications Considered

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- 5) His Worship must refrain from using the Court's email network, computer or other resources for any purpose related to his teaching activities, as those resources are provided for purposes associated with his official responsibilities.
- 6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.





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**APPENDIX C**

**PRINCIPLES  
OF JUDICIAL OFFICE OF  
JUSTICES OF THE PEACE  
OF THE ONTARIO  
COURT OF JUSTICE**

## Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

*“Respect for the Judiciary is acquired through the pursuit of excellence in administering justice.”*

# PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

## **PREAMBLE**

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

# Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

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## 1. THE JUSTICE OF THE PEACE IN COURT

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

*Commentaries:*

Justices of the peace should not be influenced by partisan interests, public pressure or fear of criticism.

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Justices of the peace have a duty to follow the law.

*Commentaries:*

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

1.3 Justices of the peace will endeavour to maintain order and decorum in court.

*Commentaries:*

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

## 2. THE JUSTICE OF THE PEACE AND THE COURT

2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

2.3 Reasons for judgment should be delivered in a timely manner.

2.4 Justices of the peace have a duty to maintain their professional competence in the law.

## APPENDIX C

# Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

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### *Commentaries:*

Justices of the peace should attend and participate in continuing legal and general education programs.

- 2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

### *Commentaries:*

Subject to applicable legislation, justices of the peace may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities do not interfere with their primary duty to the court.

## **3. THE JUSTICE OF THE PEACE IN THE COMMUNITY**

- 3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

- 3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

### *Commentaries:*

Justices of the peace must not participate in any partisan political activity.

Justices of the peace must not contribute financially to any political party.

- 3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

- 3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

### *Commentaries:*

Justices of the peace should not lend the prestige of their office to fund-raising activities.